

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the GWF Tracy Peaker Project) 01-AFC-16
Project in San Joaquin County)
(GWF Energy LLC))
_____)

MC NAMARA'S
572 11TH STREET
TRACY, CALIFORNIA 95376

THURSDAY, MARCH 28, 2002

10:00 A.M.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner, Presiding Member

Robert A. Laurie, Commissioner, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Cheryl Tompkin, Hearing Officer

Ellen Townsend-Smith, Advisor to Commissioner
Pernell

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

Eileen Allen, Senior Planner, Land Use/Traffic &
Transportation Unit

Bill Reeds, Director, Development & Engineering
Services, City of Tracy

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

APPLICANT

John P. Grattan, Esq., Counsel for Applicant
Grattan and Galati

Irwin D. Karp, Esq., Counsel for Applicant
Grattan and Galati

Amanda Monchamp, Counsel for Applicant

Douglas W. Wheeler, Vice President, GWF Power
Systems Company, Inc.

David A. Stein, P.E., Senior Project Manager, URS
Corporation

INTERVENORS PRESENT

Irene Sundberg, Tracy resident

Robert Sarvey, on behalf of the Sarvey family

John D. Bakker, Esq.; Meyers, Nave, Riback, Silver
& Wilson, representing City of Tracy

Howard L. Seligman, Esq.; Seligman & Willett,
Inc., representing Charles Tusso

Michael H. Weed, Esq., representing Larry Chang

David Hayden Blackwell, Esq.; Allen Matkins Leck
Gamble & Mallory, LLP; co-counsel representing
Larry Chang

Dennis C. Noble, Esq., representing John Corcorus
and Roger Traina

Robert Sarvey, on behalf of Sarvey family

ALSO PRESENT

Ben Hulse, Director, San Joaquin County Community
Development Department

Susan Sarvey, Tracy resident

Les Serpa, City of Tracy

Ena Aguirre, Tracy resident

Andy Bogetti, Tracy worker

Larry Williams, County resident

Wayne Livingston, Manteca resident

Lynn G. Bedford, Board of Supervisors, San Joaquin
County

Mike Boyd, president, Californians for Renewable
Energy, CARE

Patty Gilliland, Tracy resident

ALSO PRESENT (continued)

Gail Mercer, Northern California Electrical
Construction Industry

Caitlin Sarvey, Tracy resident

Mike Badner, Tracy resident

Mike Durkee, Tracy resident

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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P R O C E E D I N G S

10:00 a.m.

PRESIDING COMMISSIONER PERNELL: Good

morning. This is a continuation of the
evidentiary hearing of the GWF Energy LLC
application for certification for the GWF Tracy
Peaker Project, 169-megawatt simple-cycle natural-
gas-fired power plant that will be located on the
southwest of Tracy, of the City of Tracy.

My name is Commissioner Pernell. I am
the presiding member of the committee.
Commissioner Laurie is also here. He is the
associate member. To my left is my advisor, Ellen
Townsend-Smith, and to my right is the hearing
officer, Cheryl Tompkins (sic).

As you are aware, the primary purpose
for today's hearing is to complete the
presentations of evidentiary hearing in the
technical area of Land Use. Two witnesses, Bill
Hulse and Bill Reeds, are scheduled to testify
today regarding that topic.

In order to ensure that the committee
has an opportunity to hear the complete testimony
of both witnesses and the closing arguments of all
parties, the general public will not be allowed to

1 offer comments until the end of today's
2 evidentiary proceedings. But I want you to be
3 comfortable in knowing that the general public
4 will have an opportunity to comment.

5 At this time I'd like to ask
6 Commissioner Laurie, do you have any opening
7 comments?

8 COMMISSIONER LAURIE: No, Commissioner
9 Pernell, I do not, thank you.

10 PRESIDING COMMISSIONER PERNELL: And I
11 also want to caution you that when you are
12 questioning witnesses, please be brief, to the
13 point, and not repetitive, if at all possible.
14 We'd like to get out of here today, not tomorrow
15 morning, but we will stay as long as necessary to
16 complete this evidentiary hearing.

17 At this time I'd like to turn the
18 hearing over to our hearing officer, Ms. Tompkin.

19 HEARING OFFICER TOMPKIN: Thank you,
20 Commissioner Pernell.

21 Let me start by asking the parties to
22 identify themselves for the record and we'll begin
23 with the applicant.

24 APPLICANT COUNSEL GRATTAN: John
25 Grattan for the applicant. On my left, Amanda

1 Monchamp, and on my right, Irwin Karp.

2 HEARING OFFICER TOMPKIN: Thank you.

3 Staff?

4 STAFF COUNSEL WILLIS: Thank you. I'm
5 Kerry Willis, staff counsel, and to my left is
6 Eileen Allen and Cheri Davis.

7 HEARING OFFICER TOMPKIN: We also have
8 with us today the Public Adviser. Could you
9 please identify yourself, and I understand you
10 wanted to make a few comments.

11 PUBLIC ADVISER MENDONCA: Thank you
12 very much. My name is Roberta Mendonca and I am
13 the Energy Commission's Public Adviser. I am
14 going to be circulating the sign-in sheet. We'll
15 just pass it up and down the rows. For those of
16 you that have not already signed in, please check
17 off that you'd like to get on our mail list. It
18 will be very important if you want to get notice
19 of when the results of today's hearings and the
20 proposed decision are available, and also the
21 meetings in Sacramento.

22 In addition, I have blue cards which
23 will be distributed during the time of public
24 comment. Thank you very much.

25 HEARING OFFICER TOMPKIN: Thank you,

1 Roberta. At this time I'm going to ask the
2 intervenors to identify themselves, and we'll
3 begin with the front table.

4 INTERVENOR SELIGMAN: Howard Seligman,
5 attorney representing Charles Tusso. Mr. Tusso is
6 present somewhere in the back of this room.

7 INTERVENOR SUNDBERG: Irene Sundberg,
8 City of Tracy, resident.

9 HEARING OFFICER TOMPKIN: Could I ask
10 you to pass the mic over there so we can hear
11 them.

12 INTERVENOR WEED: Michael Weed and
13 David Blackwell for intervenor Larry Chang.

14 INTERVENOR BAKKER: John Bakker,
15 representing the City of Tracy. Behind me is Bill
16 Reeds and Bill Dean.

17 INTERVENOR SARVEY: Bob Sarvey.

18 INTERVENOR NOBLE: Dennis Noble,
19 representing landowners Corcorus and Traina.

20 HEARING OFFICER TOMPKIN: All right.
21 Did we get everyone? Thank you.

22 Then at this time, we'll begin with
23 presentation of the evidence, and I'm going to ask
24 Mr. Seligman to call his witness.

25 INTERVENOR SELIGMAN: Will Mr. Hulse be

1 sworn in?

2 HEARING OFFICER TOMPKIN: Yes. Can we
3 ask the reporter to please swear in the witness.
4 Whereupon,

5 BEN HULSE

6 Was called as a witness herein and, after first
7 being duly sworn, was examined and testified as
8 follows:

9 HEARING OFFICER TOMPKIN: Thank you.
10 You may proceed.

11 DIRECT EXAMINATION

12 BY INTERVENOR SELIGMAN:

13 Q Would you state your name, business
14 address, and present position.

15 A Ben Hulse, 1810 Hazelton Avenue,
16 Stockton, California. I am director of the San
17 Joaquin County Community Development Department.

18 Q Mr. Hulse, previously prior to this
19 hearing did you assist in the preparation of
20 written testimony that you are prepared to give at
21 this hearing?

22 A Yes, I did.

23 Q Would you summarize your academic and
24 professional background, please.

25 A I have a degree from Chico State, did

1 some advanced work in public administration, and
2 have numerous courses in the California
3 Environmental Quality Act, Subdivision Map Act and
4 planning law. I have approximately 35 years'
5 experience. I've been a director of three
6 counties and two cities.

7 Q At some point did your department
8 receive a request on behalf of GWF to provide some
9 information for their pending project?

10 A Yes, we did.

11 Q And how did that come about?

12 A We had a request from the CEC for
13 specific information. They asked us to address
14 three items: the compatibility with the
15 Williamson Act, loss of agricultural land, and
16 local laws, ordinances, regulations, and
17 standards.

18 Q During the initial review, did your
19 department receive some proposed written requests
20 that should be responsive to the request of the
21 CEC?

22 A Yes, we did.

23 Q And who did you receive that from?

24 A We received that from the applicants.
25 We originally met with the applicants, the

1 applicants and our county counsel. It was
2 determined that the applicants would provide a
3 draft for staff review. Staff reviewed that
4 draft. After review of that draft, county counsel
5 reviewed it.

6 It was then attached as a part of my
7 September 18th letter.

8 Q So was that draft then -- was the
9 ultimate document principally prepared by the
10 applicant?

11 A Yes, except for the cover letter. The
12 cover letter was prepared by my staff.

13 Q Was the letter that you referred to
14 dated September 18th, 2001 intended to provide all
15 of San Joaquin County's local ordinances, rules
16 and standards that would apply to this project if
17 it had been processed through San Joaquin County?

18 A No, it was to identify what our process
19 would be, what approval process would be required;
20 that is, to identify there would be a site
21 approval and did not go into all of the details.

22 Q Are there some local ordinances, rules
23 and standards that would apply to a site approval
24 process that were not included in your
25 September 18th, 2001 letter?

1 A Yes. We did not identify the public
2 hearing requirements, nor did we identify the
3 finding requirements of the ordinance. We
4 identified most of the development standards. I
5 think that the staff did a pretty good job of
6 identifying those. They're located throughout the
7 ordinance.

8 Q When an application is submitted to the
9 Planning Department, does your department
10 initially consider the zone of the proposed site?

11 A Yes, we do.

12 Q And as part of that review, would the
13 staff then determine whether or not there are some
14 local ordinances, rules or standards that apply to
15 the specific zone?

16 A Yes, we would.

17 Q And in this particular matter that is
18 before the Commission today, did San Joaquin
19 County ascertain the existence of a power plant
20 ordinance that would apply if it were to be
21 located in an agricultural zone?

22 A We identified that within the
23 development title there are specific provisions
24 for power plants in the agricultural zone.

25 Q And is that set forth in your ordinance

1 number, Section 9-6056(d)?

2 A Yes.

3 Q Okay. In the event that a power plant
4 were to be located in an agricultural zone within
5 San Joaquin County, are there additional
6 ordinances or rules that would also apply in the
7 review by your county, if this were done for a
8 site approval?

9 A All of the County's regulations, if
10 there's anything to do with the Public Works
11 Department, those provisions would have to be met
12 in case access is required to a county road. If
13 they were to have sanitary facilities in the
14 building, they'd have to meet the provisions of
15 the Health Department.

16 Q From a Planning Department standpoint,
17 are there requirements that you would have to --
18 from your department that you would have to
19 provide a public notice of this application?

20 A Yes. Site approval requires public
21 notice identical to that of the use permit.
22 Notice would go to property owners, depending upon
23 the location within the agricultural zone,
24 anywhere from 300 feet notice up to 1400 feet
25 notice. In this case it's in an agricultural zone

1 and required 1400-foot notice -- That's 1400 feet
2 from the property -- to all property owners within
3 that distance.

4 We would also notify any potentially
5 affected agencies, all federal, state and local
6 agencies. We would have contacted the City of
7 Tracy because it is in the sphere of influence.
8 For example, we would have contacted the Health
9 Department, Public Works Department, Department of
10 Fish and Game, and Fish and Wildlife.

11 Q Does the San Joaquin County also have a
12 local ordinance in which findings would have to be
13 made to determine whether or not a power plant
14 should be located in a requested site?

15 A We have findings that are required.
16 The site approval process, the provisions of the
17 site approval process require findings. There are
18 specific findings within the development title, in
19 Section 9-8, I believe.

20 Q Is that Section 9-818.6?

21 A I believe it is.

22 Q And does, among the other findings, is
23 it required that the County determine whether or
24 not the proposed location of the power plant would
25 be compatible with adjoining land uses?

1 A Yes.

2 Q Would the public notice and the
3 findings section that you've testified to, along
4 with the ordinance section that relates to
5 requirements to be located in an agricultural
6 zone, all be a part of what you would consider to
7 be the County's local ordinances, rules and
8 standards?

9 A Yes.

10 Q Would all of those sections, in your
11 opinion, be deemed adjudicatory as opposed to
12 policy in nature?

13 A Yes, they are regulations. They're
14 mandatory, and we must follow them when we have an
15 application.

16 Q So is it fair to say that you would
17 consider all three of those sections to be part of
18 the County's LORS in the processing of a power
19 plant in San Joaquin County?

20 A Yes, they're all of our regulations,
21 and not just for power plants but for any site
22 approval. There are specifics within each of
23 those sections for power plants in the
24 agricultural zone, but those provisions are
25 handled for all site approvals.

1 Q So the public notice and the section on
2 findings would be in addition to the provisions
3 that are applicable to the agricultural zone; is
4 that correct?

5 A Correct.

6 Q In the processing of applications for a
7 power plant in the County and the consideration of
8 the LORS that would be applied as you have
9 testified to, would the County then review each of
10 the applications based on the facts of the
11 particular application as it was presented?

12 A Yes.

13 Q You had previously indicated in earlier
14 testimony that if processed in the County, a
15 referral of the application would be made; is that
16 correct?

17 A That's correct.

18 Q And that would also have included the
19 City of Tracy?

20 A That's correct.

21 Q And why would you have referred that to
22 the City of Tracy?

23 A Because it's in the sphere of influence
24 of the City of Tracy.

25 Q And what is the significance of being

1 within the sphere of influence of a community,
2 such as the City of Tracy?

3 A There is potential impact on the future
4 growth of the City, and the City deserves an
5 opportunity anytime there is an application by the
6 County to respond and provide evidence to the
7 County that the project will or will not affect
8 their future plans.

9 Q And to the extent that the City of
10 Tracy would have made comments to the County, to
11 what extent would they be considered by the County
12 as part of its overall review of an application?

13 A They're always considered, depending
14 upon the severity of any particular impact.
15 They're considered on a case-by-case basis.

16 Q Now, referring to the contents of your
17 September 18th, 2001 letter, do you believe that
18 the CEC wanted to know all of the County, San
19 Joaquin County LORS that would be applicable to
20 this project if it were processed within the
21 County?

22 A I believe that they wanted to know
23 everything relative to the agricultural zone;
24 that's what we primarily focused on.

25 Q Did you have any belief that they also

1 wanted to know what, if any, additional
2 requirements would be in place if this were to be
3 processed in an agricultural zone?

4 A They asked us what our process was; we
5 responded with that. I don't -- We did not get a
6 request to do an exhaustive search of all local
7 ordinances. They do refer to local laws,
8 ordinances, regulations, and standards, but from
9 the response of my letter I think it's evident we
10 focused on the need to provide site approval in
11 the agricultural zone.

12 Q As you look back upon the letter, and I
13 know that you've been here listening to the
14 testimony, is there any reason that you did not
15 include the public notice and findings sections
16 that you testified to that are part of your LORS?

17 A Staff did not feel that they could
18 make -- you know, were responsible for findings or
19 notice -- That's under the jurisdiction of the
20 CEC -- and staff informed me that they did not
21 provide any statements on those, because they
22 provided statements on what would be required to
23 process it in an agricultural zone.

24 Q Do you believe that the findings
25 section of 9-818.6 is an integral part of the

1 processing that you would go through if it was
2 processed in San Joaquin County?

3 A Yes, findings are required.

4 Q And that would be part of your LORS?

5 A Yes, they would.

6 Q Okay. Does San Joaquin County require
7 a power plant to be located in an agricultural
8 zone?

9 A No.

10 Q Was the use of the word "required," as
11 contained in your letter, an appropriate word to
12 use?

13 A Well, there are other terms that
14 probably could be used, but that particular term
15 is only used in the agricultural zone. And what
16 everyone has to remember is that the agricultural
17 zone is designed, and all of those statements --
18 There are three provisions -- are designed to
19 protect the existing agriculture. The requirement
20 is there to make sure that any of the services
21 that are necessary for the placement of the power
22 plant are, in fact, there.

23 We do not want to have power plants
24 located out in the middle of nowhere where there
25 is no source of power. That would require

1 additional lines to go across agricultural
2 properties, and interrupt agricultural operations.
3 It is best to have agricultural operations
4 protected by locating power plants and any other
5 utility services, such as drainage, sewer and
6 water facilities in places that do not affect the
7 agricultural operations.

8 Q Could this power plant be located in
9 other sites, assuming that sources of power were
10 available?

11 A Certainly.

12 Q And could that have included the
13 industrial sites that are across the railroad
14 tracks from where this proposed site is?

15 A Yes.

16 Q And do you know whether or not, in that
17 particular location, where the industrial uses are
18 across those railroad tracks, there are sources of
19 power available?

20 A Same source of power would be available
21 there as available at the existing site.

22 Q Okay. Was there any intent for your
23 letter to indicate that the proposed site was the
24 right place for this plant to be located?

25 A No, we weren't asked to provide any

1 evaluation of compatibility or suitability.

2 Q Was there any reason that you used the
3 word "findings" in your particular letter?

4 A Yes, there are two reasons. One, the
5 agricultural zone uses the word "findings," so
6 that had to be done. And the second is that those
7 specific terms were utilized in the draft that was
8 presented to us.

9 Q And that draft was presented to you by
10 the applicant?

11 A Yes, it was.

12 Q Was your letter intended to indicate
13 that this proposal could meet all of the County
14 LORS that you have testified to this morning?

15 A No, we have no way of knowing that,
16 unless we're reviewing the entire project. We
17 couldn't make findings on this.

18 Q And was your letter limited to what the
19 County believed was being asked of it at the time?

20 A Yes.

21 Q Okay. And has the Board of Supervisors
22 of San Joaquin County, by resolution, opposed this
23 project?

24 A Yes, they have.

25 INTERVENOR SELIGMAN: I have no further

1 questions.

2 HEARING OFFICER TOMPKIN: Thank you.

3 At this time we'll give an opportunity for cross
4 examination, and we'll begin with the application,
5 Mr. Grattan.

6 APPLICANT COUNSEL GRATTAN: The
7 applicant at this point would waive cross
8 examination, or at least reserve it until the end,
9 excuse me, reserve it until the end.

10 INTERVENOR SARVEY: I'd like to object
11 to that, unless the intervenors are to follow
12 Mr. Grattan.

13 APPLICANT COUNSEL GRATTAN: The
14 applicant has the burden of proof here.

15 HEARING OFFICER TOMPKIN: I'll permit
16 it. Overruled.

17 Ms. Willis, does staff wish to
18 question?

19 STAFF COUNSEL WILLIS: No, staff does
20 not, and thanks, Mr. Hulse, for coming today.

21 HEARING OFFICER TOMPKIN: Then we'll
22 proceed with the cross examination by the
23 intervenors. Are there any questions for this
24 witness?

25 It might be simpler to step to the

1 podium.

2 INTERVENOR BLACKWELL: Would that be
3 better?

4 HEARING OFFICER TOMPKIN: I think so.

5 INTERVENOR BLACKWELL: Okay. Is this
6 okay? This was out here. Is that all right to
7 use that?

8 HEARING OFFICER TOMPKIN: Okay. Don't
9 pull it any further, though.

10 (Laughter.)

11 INTERVENOR BLACKWELL: David Blackwell,
12 on behalf of intervenor Larry Chang.

13 Good morning, Mr. Hulse.

14 THE WITNESS: Good morning.

15 CROSS EXAMINATION

16 BY INTERVENOR BLACKWELL:

17 Q I believe you just testified a few
18 moments ago that the basis of the letter was
19 drafted by GWF's attorney; is that correct?

20 A I'm not sure if it was drafted by GWF's
21 attorney or who it was drafted by. It was drafted
22 by and submitted by the applicant and submitted to
23 us.

24 Q And is it your understanding that the
25 CEC staff was aware that the letter was being

1 drafted by the applicant, prior to it being
2 submitted back to you?

3 A I don't if the CEC staff was aware of
4 that or not.

5 Q Okay. You testified also a few moments
6 ago that the findings under 9-818.6 are part of
7 the LORS, correct?

8 A That's correct.

9 Q And under the fifth requirement of
10 818.6 there's a requirement that the use is
11 compatible with adjoining land uses, correct?

12 A Correct.

13 Q And I believe you testified that in
14 order to make that finding you would consult with
15 the City of Tracy in this particular case?

16 A Correct.

17 Q Are you familiar with Tracy's position
18 on whether the proposed power plant is or is not
19 consistent with its land uses?

20 A The City Council is opposed to the
21 project.

22 Q And would you take that into
23 consideration upon making your findings under
24 818.6?

25 A We certainly would; in fact, we would

1 not decide the project, based upon that one fact.
2 We would elevate it to the San Joaquin County
3 Planning Commission.

4 Q So you would be able to make any
5 decision at that point, based upon Tracy's
6 opposition?

7 A Not at the staff level. The site
8 approval process allows staff to make limited
9 approvals, and when there is substantial
10 controversy surrounding the project, it's elevated
11 to the Planning Commission.

12 Q And the Planning Commission would also
13 take into account Tracy's opposition?

14 A That's correct.

15 Q And that would be required, for them to
16 take that into account?

17 A That's correct.

18 Q Thank you.

19 INTERVENOR BLACKWELL: Nothing further.

20 HEARING OFFICER TOMPKIN: Anything
21 further for this witness? Mr. Sarvey?

22 CROSS EXAMINATION

23 BY INTERVENOR SARVEY:

24 Q Regarding your letter of
25 September 18th, I have three drafts of this letter

1 from the Community Development Department's files.
2 Are these letters based upon the findings that
3 were provided to you by GWF's land use attorney
4 Mike Hakeem, or are they based on the County's own
5 independent CEQA review?

6 A Well, the drafts that you're talking
7 about, are those the cover letter? Yes, those are
8 all the cover letters. The first draft by Tamara
9 Martin with staff was reviewed by Kerry Sullivan,
10 deputy director of Planning. She made comments on
11 that. It was changed. The address I believe was
12 to a member of the CEC. That was later changed
13 specifically to I believe the name Cheryl Davis.

14 Those are just drafts, showing that we
15 have a process, and it's just the cover letter.
16 The attachments that were provided by the
17 applicant remain the same throughout those, except
18 for some minor changes, staff said. Without being
19 able to notify -- Without being able to identify
20 exactly what those minor changes were. I believe
21 it was just they said some minor technical
22 changes, nothing substantive.

23 Q In light of the fact that the CEC's
24 final CEQA document is not yet available, in your
25 opinion could the County comply with its own

1 requirements for CEQA review?

2 A Well, we don't have an application for
3 this project, so we don't have any CEQA
4 requirements for this project. If the question is
5 at this point in time could -- if the County were
6 reviewing this application, do we have enough
7 information for action, you know, the answer would
8 be no, because we haven't conducted CEQA review.

9 Whether or not the California Energy
10 Commission has completed their CEQA review and has
11 enough information, that's determined by the
12 Energy Commission.

13 Q Have you seen this fax which outlines
14 the direct findings of compatibility in ag land
15 from Mike Hakeem, GWF land use attorney?

16 APPLICANT COUNSEL GRATTAN: Excuse me
17 just a second. That isn't evidence in the record.
18 I'd like to at least see what Mr. Sarvey is
19 talking about.

20 INTERVENOR SARVEY: Sure, I'll give you
21 a copy.

22 HEARING OFFICER TOMPKIN: Before the
23 witness responds, I'm going to ask Mr. Sarvey to
24 make that document available to counsel for the
25 applicant as well as for staff.

1 COMMISSIONER LAURIE: Well, I'd like to
2 see it too.

3 HEARING OFFICER TOMPKIN: And the
4 Commissioners as well.

5 Mr. Sarvey, could you pass the
6 document.

7 INTERVENOR SARVEY: Yeah, we're working
8 on it.

9 APPLICANT COUNSEL GRATTAN: Wait a
10 second, what is this?

11 HEARING OFFICER TOMPKIN: Just pull the
12 letter, and pull it out and get the letter.

13 INTERVENOR SARVEY: Basically, this is
14 just my offer of proof of all the statements that
15 I'm making, so --

16 HEARING OFFICER TOMPKIN: Well, we're
17 just dealing with the letter at this time, so all
18 we need is the letter. So if you can pull out the
19 letter and make copies available, that would be
20 helpful.

21 INTERVENOR SARVEY: Okay.

22 HEARING OFFICER TOMPKIN: We'll go off
23 the record briefly.

24 (Thereupon, a recess was
25 held off the record.)

1 HEARING OFFICER TOMPKIN: Have the
2 parties had an opportunity to review the proposed
3 letter?

4 APPLICANT COUNSEL GRATTAN: Yes.

5 HEARING OFFICER TOMPKIN: All right.
6 We're back on the record.

7 APPLICANT COUNSEL GRATTAN: And we'll
8 accept that as refreshing his recollection. We're
9 not prepared to accept that as an exhibit now
10 because we had no previous opportunity. You can't
11 spring these exhibits on --

12 INTERVENOR SARVEY: They're from your
13 attorney, Mr. Grattan. Those exhibits are from
14 your attorney to the Community Development
15 Department, that file is over there that Mr. Hulse
16 brought for your review.

17 APPLICANT COUNSEL GRATTAN: I've never
18 seen this.

19 HEARING OFFICER TOMPKIN: Okay.
20 Ms. Willis?

21 STAFF COUNSEL WILLIS: Staff has
22 obviously never seen this before. I'm not sure --
23 If it came from the applicant, then we would not
24 oppose this coming as an exhibit.

25 HEARING OFFICER TOMPKIN: And the

1 question the committee has is what is the
2 relevance of this exhibit?

3 INTERVENOR SARVEY: The relevance is to
4 establish that Mike Hakeem, GWF land use attorney,
5 provided these findings to the County and that
6 they're not the County's findings.

7 INTERVENOR SELIGMAN: In response to
8 that, if I may?

9 HEARING OFFICER TOMPKIN: Mr. Seligman?

10 INTERVENOR SELIGMAN: Mr. Hulse has
11 already testified to that in direct examination,
12 that these were provided to the County by the
13 applicant or its representative, so I --

14 COMMISSIONER LAURIE: Ms. Tompkins, if
15 I may, Commissioner Pernell, if I may?

16 PRESIDING COMMISSIONER PERNELL: Yes.

17 COMMISSIONER LAURIE: This is a
18 document that has ultimately ended up in your
19 September 18th letter; is that not correct,
20 Mr. Hulse?

21 THE WITNESS: That is correct.

22 COMMISSIONER LAURIE: And your
23 signature appears at the bottom of that letter;
24 does it not?

25 THE WITNESS: Yes, it does.

1 COMMISSIONER LAURIE: Prior to
2 executing that letter, did you review the contents
3 of that letter?

4 THE WITNESS: Yes, I did.

5 COMMISSIONER LAURIE: Did you agree
6 with the contents of that letter at the time that
7 you signed the letter?

8 THE WITNESS: I agreed with that, based
9 upon my staff's evaluation, yes.

10 COMMISSIONER LAURIE: Thank you.
11 That's all I find to be relevant, Madam Hearing
12 Officer.

13 HEARING OFFICER TOMPKIN: Well, the
14 committee will make the finding that the document
15 is not relevant and will ask Mr. Sarvey to move on
16 to his next question.

17 BY INTERVENOR SARVEY:

18 Q Have you seen this document that was
19 faxed to your department outlining the -- from
20 Eileen Allen to Kerry Sullivan of the CEC,
21 outlining the government's requirement for local
22 agency review within 35 to 65 days of the date of
23 the data adequacy?

24 A I'm not familiar with that document.

25 Q Were you aware at the time that this

1 project did not qualify for the governor's four-
2 month expedited review?

3 A I have no idea.

4 APPLICANT COUNSEL GRATTAN: I don't
5 know if this is in the nature of an objection or
6 not. I believe that the cross examination should
7 essentially be limited to the questions that were
8 asked on land use issues and the matter in which
9 the San Joaquin County Community Development
10 Department reviewed or did what it did or didn't
11 do in connection with the LORS issue and as it
12 relates to the governor's position. And I don't
13 think there's any relevance to this.

14 HEARING OFFICER TOMPKIN: Well, I'll
15 take that as an objection and it will be
16 sustained. Mr. Sarvey will limit his questioning
17 to the scope of the direct testimony.

18 INTERVENOR SARVEY: Okay.

19 BY INTERVENOR SARVEY:

20 Q Have you seen this document from your
21 department's findings that the power plant is not
22 temporary?

23 APPLICANT COUNSEL GRATTAN: I'm going
24 to object. We have no idea what that paper is,
25 where it's from. We have no idea of the integrity

1 of the document. It's a piece of paper.

2 HEARING OFFICER TOMPKIN: Mr. Sarvey?

3 APPLICANT COUNSEL GRATTAN: Do you have
4 another copy, Bob? Thanks.

5 We have no idea that this is even
6 related to the County's review of the Tracy peaker
7 project.

8 HEARING OFFICER TOMPKIN: And this
9 doesn't really appear to be relevant, since
10 Mr. Hulse has testified that the basis for the
11 document or the document that he approved was the
12 September 18th letter, so I'll sustain an
13 objection to the document.

14 Next question, please.

15 INTERVENOR SARVEY: I just wanted to
16 make an offer of proof and it's in the files that
17 Mr. Hulse has brought with him, and it's just an
18 offer of proof that the finding that the County
19 Development Department said that this plant is not
20 temporary.

21 HEARING OFFICER TOMPKIN: Well, I will
22 accept this and it will be docketed.

23 INTERVENOR SARVEY: Thank you.

24 APPLICANT COUNSEL GRATTAN: Again, we
25 have no idea what this is.

1 HEARING OFFICER TOMPKIN: He can submit
2 whatever -- It's noted for the record, it's just
3 docketed.

4 APPLICANT COUNSEL GRATTAN: Oh, just
5 docketed, that's fine. No objection.

6 HEARING OFFICER TOMPKIN: Is there
7 anything further for this witness? Ms. Sundberg.

8 INTERVENOR SUNDBERG: Irene Sundberg.

9 CROSS EXAMINATION

10 BY INTERVENOR SUNDBERG:

11 Q The findings required for the site
12 approval state that the issuance of an approval is
13 not to be significantly detrimental to the public
14 health, safety or welfare.

15 Mr. Hulse, does this mean that the
16 County could examine environmental issues such as
17 air quality and similar environmental issues?

18 A Certainly. The County is required to
19 do that by the California Environmental Quality
20 Act for projects that come under the County's
21 authority.

22 Q Would examination of environmental
23 issues therefore be part of the County's LORS?

24 A I don't know that they're specifically
25 part of the County's LORS. They're directed from

1 the State California Environmental Quality Act
2 that all jurisdictions have to meet.

3 Q Okay. Were these issues not discussed
4 in the September 18th letter of 2001 because of
5 your previous testimony that such a letter was not
6 intended to be a comprehensive discussion of all
7 the applicable LORS in a situation?

8 A We didn't discuss air quality. We
9 weren't asked to address air quality or any of the
10 environmental impacts, nor did we address
11 suitability, compatibility, because we weren't
12 asked to do that. And we have no authority under
13 the Code.

14 INTERVENOR SUNDBERG: Okay, thank you.

15
16 HEARING OFFICER TOMPKIN: Thank you.

17 INTERVENOR BLACKWELL: Madam Chair, may
18 I ask one followup question based on the question
19 by Ms. Sundberg?

20 HEARING OFFICER TOMPKIN: One question.

21 INTERVENOR BLACKWELL: Thank you.

22 CROSS EXAMINATION (RESUMED)

23 BY INTERVENOR BLACKWELL:

24 Q Mr. Hulse, Ms. Sundberg asked you since
25 under 9-818.6(d) one of the particular findings is

1 that the permit will not significantly be
2 detrimental to the public health, safety or
3 welfare or be injurious to the property or
4 improvements of adjacent properties, so,
5 therefore, under your County LORS you do have to
6 perform some form of environmental review to
7 address those questions; isn't that correct?

8 A Certainly, all agencies do.

9 INTERVENOR BLACKWELL: All right, thank
10 you.

11 HEARING OFFICER TOMPKIN: Any redirect,
12 or Mr. Grattan, did you have any questions?

13 APPLICANT COUNSEL GRATTAN: All my
14 questions have been asked and answered with just a
15 couple of exceptions.

16 CROSS EXAMINATION

17 BY MR. GRATTAN:

18 Q One, Mr. Hulse, in reviewing a project,
19 in the County's review of a project that is within
20 the County's jurisdiction but within the City of
21 Tracy's sphere of influence, would you absolutely
22 apply the City of Tracy's land use laws and
23 constraints, or would it be part of something you
24 considered?

25 A It would be considered. I can't say

1 that they would always be followed --

2 Q Thank you.

3 A -- identically.

4 Q You've answered the question. And
5 number two, you mentioned the County's Board of
6 Supervisors resolution in opposition of the Tracy
7 peaker project. Has that resolution at all
8 impugned or repudiated your letter of
9 September 18th and the attached findings?

10 INTERVENOR SELIGMAN: I'm going to
11 file -- I'm objecting to that. You have been
12 provided a copy of the resolution; the resolution
13 speaks for itself.

14 APPLICANT COUNSEL GRATTAN: Fair
15 enough.

16 No further questions.

17 HEARING OFFICER TOMPKIN: All right.

18 Any redirect, Mr. Seligman?

19 INTERVENOR SELIGMAN: No.

20 HEARING OFFICER TOMPKIN: Thank you,
21 Mr. Hulse.

22 (Thereupon, the witness was
23 excused from the stand.)

24 HEARING OFFICER TOMPKIN: Then at this
25 time we will ask Mr. Bakker to call his witness.

1 And could you please identify your witness for the
2 record.

3 INTERVENOR BAKKER: Sure. The City of
4 Tracy would like to call Bill Reeds.

5 HEARING OFFICER TOMPKIN: Okay, and
6 once again, identify yourself.

7 INTERVENOR BAKKER: I'm John Bakker,
8 representing the City of Tracy.

9 Mr. Reeds, have you been sworn?
10 Whereupon,

11 BILL REEDS
12 Was called as a witness herein and, after first
13 being duly sworn, was examined and testified as
14 follows:

15 HEARING OFFICER TOMPKIN: Thank you.

16 INTERVENOR BAKKER: Okay, Mr. Reeds.
17 Thank you for coming today.

18 DIRECT EXAMINATION

19 BY INTERVENOR BAKKER:

20 Q Can you please state your name and
21 address and position for the record, please.

22 A My name is Bill Reeds. I am director
23 of Development and Engineering Services for the
24 City of Tracy. My address is 520 Tracy Boulevard.

25 Q Okay, Mr. Reeds. Did you prepare

1 written testimony in this proceeding?

2 A I did.

3 Q Could you please state your
4 qualifications for the record.

5 A I have a bachelor's degree in
6 architectural design. I have a master's degree in
7 regional and city planning. I have approximately
8 32 years' experience in planning and community
9 development. I have been community development
10 director or the equivalent title of three cities
11 for a total of about 20 years. In my position
12 with the City of Tracy, I am responsible for
13 planning, building, engineering, redevelopment,
14 housing, and code enforcement.

15 Q Thank you. Do you have any corrections
16 to your written testimony?

17 A I do have a couple of corrections.
18 There are errors -- I'd like to say they're typos,
19 I don't know that they are -- on the first page.
20 There are errors in both acreage figures. There's
21 an acreage figure of 43,560. That number should
22 be 13,312. There is an acreage figure of 72,500.
23 That acreage figure should be 72,960. I don't
24 know that that's particularly relevant, but it is
25 a correction.

1 On the second page of my testimony,
2 there is a sentence that says, "My testimony will
3 also address cumulative air quality impacts." My
4 testimony will not address cumulative air quality
5 impacts. Mr. Pinhey for the City of Tracy did
6 that.

7 Q Thank you. Mr. Reeds, could you please
8 briefly summarize the key points in your
9 testimony.

10 A Yes, I'd be happy to. I think the key
11 point the City of Tracy would like to make clear
12 is the position of the City of Tracy and present
13 that position to the Commission on the various
14 issues related to the proposed siting of the
15 peaker plant and the environmental assessment
16 prepared by the CEC staff.

17 The City of Tracy contends that there
18 is non-compliance with LORS based on City of Tracy
19 land use plans and policies. The proposed peaker
20 plant is within the sphere of influence as
21 approved by County LAFCO. It is located on
22 property planned for very low density in the South
23 Schulte specific plan, which amended the general
24 plan where it was shown as low density.

25 The general plan for the City of Tracy

1 was prepared in compliance with state law
2 regarding preparation of general plans, and the
3 South Schulte specific plan was prepared in
4 compliance with state law regarding specific
5 plans, to the best of my knowledge.

6 The South Schulte plan envisions a
7 diverse pedestrian-oriented community with
8 recreational uses, school sites, an urban center,
9 and that urban center would include high-density
10 residential office, retail, public spaces. It
11 does not envision a power plant. There are
12 industrial uses shown in the South Schulte
13 specific plan. Those industrial uses, as far as I
14 know, were, as you will see in my background, were
15 not originally -- or excuse me, I was not with the
16 City at the time the South Schulte plan was
17 approved, but my understanding is those industrial
18 uses were used to buffer less desirable existing
19 heavy industrial uses in the area.

20 My testimony states and I believe that
21 undesirable uses can be phased out over a period
22 of time. It's been done in other cities and I've
23 seen it done. The City of Tracy is really
24 concerned about the CEC being able to override
25 local plans, and negate a lot of planning work and

1 effort that has gone on in compliance with other
2 state laws.

3 The City, as we have stated in the
4 testimony, believes that the CEC staff in the land
5 use analysis is misleading and really doesn't
6 adequately cover the subject. We believe the
7 Tracy peaker plant will have significant negative
8 impacts that have not been evaluated. And we also
9 believe the City of Tracy's plans and the impacts
10 on the City of Tracy have essentially been
11 ignored.

12 Q Thank you, Mr. Reeds. Can you tell us
13 how much time and effort the City has spent in
14 doing planning for the areas around the TPP site?

15 A Well, I can't answer that question
16 directly because I was not with the City. My
17 understanding is the preparation of the general
18 plan took a couple of years. Preparation of the
19 South Schulte specific plan took an extensive
20 amount of time and somewhere in excess of \$250,000
21 in cost.

22 Q Thank you. Just to clarify, could you
23 briefly describe the land use designations for the
24 TPP site and its surroundings under both the UMP,
25 the City's general plan, and the South Schulte

1 specific plan?

2 A The UMP allows -- The designation is
3 low density and it allows 2.1 to 5.8 dwelling
4 units per gross acre. The South Schulte specific
5 plan modified that to allow a density range of .1
6 units per acre to two units an acre. .1 units per
7 acre is the equivalent obviously of one unit for
8 every ten acres.

9 Q Thank you. Now, would the TPP site or
10 would the TPP project be consistent with those
11 land use designations other than UMP and under the
12 South Schulte specific plan?

13 A It would not.

14 Q Thank you. Mr. Reeds, did you have an
15 opportunity to review the maps and aerial photos
16 that were included as part of the applicant's
17 submittal and also as part of the staff
18 assessments?

19 A I did review them, yes.

20 Q And did you have any issues with those
21 documents?

22 A Well, I think as I looked at them, the
23 issue I had, it was my impression that they were
24 very old aerial photographs -- and again, this was
25 an impression, I have no knowledge of fact -- that

1 they were sized to carefully avoid showing any
2 existing development within the City of Tracy.

3 Q Mr. Reeds, do you have any maps or
4 aerial photos that the City has that we could show
5 the Commission, a more up-to-date aerial
6 photograph of the area and the sites surrounding
7 the TPP site?

8 A We do have a large fairly recent
9 aerial. My opinion is that it's probably less
10 than a year old.

11 INTERVENOR BAKKER: Madam Hearing
12 Officer, I'm not sure if that's the best place for
13 the aerial or perhaps we can use the applicant's
14 easel?

15 APPLICANT COUNSEL GRATTAN: Sure.

16 INTERVENOR BAKKER: Thank you.

17 BY INTERVENOR BAKKER:

18 Q I guess first of all, Mr. Reeds, can
19 you point out the TPP site? I'm sorry, I --

20 COMMISSIONER LAURIE: Excuse me, could
21 I have some foundation? Could you identify what
22 these documents are, Mr. Bakker?

23 INTERVENOR BAKKER: Okay, thank you.

24 COMMISSIONER LAURIE: Can you have the
25 witness identify what the documents are.

1 BY INTERVENOR BAKKER:

2 Q Can you identify these documents for
3 the record, please.

4 A This is a fairly recent aerial
5 photograph. It does not have a date on it but
6 it's within the last year, taken of the City of
7 Tracy, the western portion of the City of Tracy.
8 And we received it from a developer that's
9 interested in a project totally unrelated to the
10 peaker plant.

11 Q And is that a public document?

12 A It is a public document.

13 Q Thank you.

14 A We had intended to submit it as part of
15 the record, but we lost our rolled-up version at
16 the last hearing, so we can duplicate this, if you
17 like.

18 Q If you could, Mr. Reeds, could you
19 point out the TPP site for us.

20 A I'll ask Mr. Dean, my associate, to do
21 that.

22 Q And can you generally outline the
23 outline of the South Schulte specific plan area.

24 A Well, the South Schulte specific plan
25 generally picks up everything to the west or left

1 and to the south of that yellow line, where you
2 see existing development within the City of Tracy.
3 We do also have a map of the South Schulte
4 specific plan. I think that plan was submitted as
5 part of the record earlier, so I don't know if we
6 could do it now.

7 Q And could you show us where some of the
8 more recent development on Tracy's western edge is
9 on this photograph.

10 A The two most recent developments, the
11 westernmost portions are the Red Bridge
12 development and then immediately north of that the
13 Presidio development, both of which have fairly
14 extensive construction.

15 THE WITNESS: Mr. Dean, if you would
16 point out Corral Hollow.

17 The City has fairly extensive
18 development going up and down Corral Hollow, which
19 is roughly a mile east of Lammers.

20 BY INTERVENOR BAKKER:

21 Q Okay, thank you. Can you show us the
22 extent of the Red Bridge development at full
23 build-out?

24 HEARING OFFICER TOMPKIN: And could you
25 describe that verbally for the record.

1 THE WITNESS: Red Bridge is an award-
2 winning subdivision or development within the City
3 of Tracy. It won a Gold Nugget award, which is a
4 very prestigious award given by the West Coast
5 Builders Conference. It features a wide variety
6 of housing, ranging from approximately 1200-
7 square-foot cottages costing in the range of
8 \$200,000 to very large and when you get above
9 3,000 square feet I guess I sort of lose track of
10 how big that is, but I think they're in excess of
11 4,000 square feet and perhaps cost as much as a
12 million dollars.

13 It is I think the area of highest cost
14 housing within the City of Tracy, and also some of
15 the lowest cost new housing within the City of
16 Tracy.

17 HEARING OFFICER TOMPKIN: And in terms
18 of location relative to the plant?

19 THE WITNESS: It is approximately a
20 mile, slightly less than a mile due east.

21 HEARING OFFICER TOMPKIN: Thank you.

22 INTERVENOR BAKKER: Thank you,
23 Mr. Reeds. Nothing further.

24 HEARING OFFICER TOMPKIN: All right.

25 Mr. Grattan, do you wish to cross

1 examine this witness?

2 APPLICANT COUNSEL GRATTAN: I will
3 defer cross examination until the end, with your
4 permission.

5 HEARING OFFICER TOMPKIN: Ms. Willis?

6 STAFF COUNSEL WILLIS: Thank you. We
7 have just a few questions.

8 Thank you for coming, Mr. Reeds.

9 CROSS EXAMINATION

10 BY MS. WILLIS:

11 Q You referred to the existing heavy
12 industrial area that there's a possibility that
13 these facilities could be relocated; isn't that
14 speculative?

15 A My testimony is that over time it is
16 possible to phase out undesirable land uses, and
17 there are different ways to do that. One is they
18 simply outlive their usefulness. I in my career
19 have seen regional shopping centers of a million
20 square feet be built and demolished and replaced
21 with housing and other uses. I have seen
22 industrial projects go away.

23 I think in my testimony I outlined some
24 recent experience in the City of Hercules where
25 they've eliminated an oil refinery, which is

1 probably as difficult a land use to move that I'm
2 aware of -- I've actually had some experience with
3 the Atomic Energy Commission and that was probably
4 harder, but certainly an oil refinery and a
5 dynamite factory within the City of Tracy, those
6 uses can be phased out over time.

7 And I don't know what the useful life
8 of the existing uses there is. Maybe it's ten
9 years, maybe it's 50 years, but over time there
10 are opportunities. Ultimately through
11 redevelopment and other processes it's possible to
12 take more assertive action.

13 Q So at this time your testimony is the
14 City of Tracy has no plans to phase these out; is
15 that correct?

16 A We do not know.

17 Q Okay. Also, is the City of Tracy
18 processing any annexation applications for this
19 property, for the proposed site?

20 A For the proposed site?

21 Q Right.

22 A No.

23 Q Okay. In the letter from Mr. Dean to
24 Eileen Allen, our senior planner from the Energy
25 Commission staff, dated January 15th, 2002, there

1 were some general comments made on the GWF
2 application; are you aware of that letter?

3 A I am aware of that letter. I don't
4 have a copy in front of me.

5 Q Are you aware that if Mr. Dean
6 expressed any specific environmental concerns or
7 any specific environmental impacts it would be a
8 result of this proposed project?

9 A My recollection of the letter is that
10 primarily we had significant difficulty with the
11 quality of the analysis and the fact that the
12 analysis really did not include the City of Tracy.

13 Q Are you aware that Mr. Dean met with
14 our staff member, Ms. Eileen Allen, who is seated
15 next to me?

16 A I am aware that Mr. Dean met with a
17 staff member; I don't know who it was.

18 Q Thank you. And are you aware if any
19 specific environmental impacts were discussed
20 during this meeting?

21 A I was not at the meeting, I'm not aware
22 of them.

23 Q The letter states on the first page,
24 "This section analyzes the proposed power plant as
25 if it were located solely in the County." Is it

1 not located solely in the County at this point?

2 A It is located solely in the County,
3 yes.

4 Q Okay, thank you.

5 STAFF COUNSEL WILLIS: That's all I
6 have.

7 COMMISSIONER LAURIE: Commissioner
8 Pernell?

9 PRESIDING COMMISSIONER PERNELL:
10 Commissioner Laurie.

11 EXAMINATION BY COMMITTEE

12 BY COMMISSIONER LAURIE:

13 Q Sir, I believe your testimony was that
14 in your opinion, this project does not comply with
15 City LORS; was that your testimony?

16 A That's correct.

17 Q And the parcel upon which the TPP is
18 located is rezoned by the City; is that correct?

19 A That's correct.

20 Q And the purpose of rezoning is to deal
21 with annexation issues; is that primarily correct?

22 A Annexation issues and land use upon
23 annexation, yes.

24 Q But all related to annexing property;
25 is that correct?

1 A Yes.

2 Q Thank you. The Commission will be
3 certainly interested in examining the legal issue
4 of whether the issue of City LORS is relevant.
5 Because of that, I need to ask if, in your
6 expertise as a long-time land planner, if I'm
7 seeking to locate on the proposed TPP site a
8 bowling alley, for example, in its current state
9 as being in the County of San Joaquin, from a
10 legal perspective -- Now, I'm not talking about
11 CEQA, I'm not talking about environmental issues,
12 I'm speaking only of general plan and zoning
13 issues -- are the City general plan and zoning
14 laws legally applicable to my proposed bowling
15 alley site?

16 A No.

17 COMMISSIONER LAURIE: Thank you.

18 That's all I have, Ms. Tompkin.

19 Thank you, sir.

20 HEARING OFFICER TOMPKIN: All right.

21 Anything further, Ms. Willis?

22 STAFF COUNSEL WILLIS: Nothing further,
23 thank you.

24 HEARING OFFICER TOMPKIN: Are there any
25 questions by the intervenors? Mr. Seligman.

1 INTERVENOR SELIGMAN: Briefly.

2 CROSS EXAMINATION

3 BY INTERVENOR SELIGMAN:

4 Q Mr. Reeds, you heard the testimony of
5 Mr. Hulse this morning?

6 A I did.

7 Q And in connection with that portion of
8 the testimony where he discussed the issue of
9 sphere of influence, would you concur with what he
10 had to say on the role of the County on that
11 particular issue?

12 A Yes, I would.

13 INTERVENOR SELIGMAN: That's all I
14 have.

15 COMMISSIONER LAURIE: Wait, wait, wait.
16 You've got to be more specific. There is much
17 discussion about the role of the County in sphere
18 of influence. Are you referring to -- His
19 testimony doesn't help me. Can you refer
20 specifically to what portion of the discussion
21 this witness agrees with Mr. Hulse?

22 BY INTERVENOR SELIGMAN:

23 Q Mr. Reeds, do you recall that Mr. Hulse
24 indicated that because of the fact that this site
25 is within the sphere of influence of Tracy that

1 any comment or analysis that the City would have
2 would be considered by San Joaquin County if it
3 was processed by San Joaquin County?

4 A Yes.

5 Q And do you also understand that, from
6 Mr. Hulse's testimony, that the ultimate decision
7 as to whether or not the position taken by the
8 City is adopted or not rests with the sole
9 discretion of the County of San Joaquin?

10 A Yes, that's correct.

11 INTERVENOR SELIGMAN: Thank you.

12 COMMISSIONER LAURIE: Thanks.

13 CROSS EXAMINATION

14 BY INTERVENOR SARVEY:

15 Q Do you feel that the buffer zone that
16 the TPP will require will result in inverse
17 condemnation of surrounding landowners' property?

18 A I don't -- Inverse condemnation is a
19 legal term which I'm pretty familiar with, but I'm
20 not an attorney and don't really qualified to
21 answer that. My opinion, though, is that the
22 location of the peaker plant will cause the need
23 for modifications to the South Schulte specific
24 plan. Exactly what those modifications are we
25 really have not studied in great detail at this

1 point.

2 INTERVENOR SARVEY: Thank you.

3 HEARING OFFICER TOMPKIN: Anything
4 further for this witness?

5 INTERVENOR BLACKWELL: David Blackwell,
6 on behalf of intervenor Chang.

7 CROSS EXAMINATION

8 BY INTERVENOR BLACKWELL:

9 Q Mr. Reeds, I believe you testified a
10 few moments ago there is not a pending annexation
11 application before LAFCO; is that correct?

12 A My recollection of the question was is
13 the City processing an application, which may or
14 may not be exactly the same thing you're asking
15 me.

16 Q And it's your testimony that the City
17 is not currently processing an application; is
18 that correct?

19 A That's correct.

20 Q But it is correct, however, that there
21 is a supplemental EIR that is pending on the
22 property, for the South Schulte specific plan
23 area; isn't that correct?

24 A Yes, that is correct.

25 Q And as part of that process there is

1 also an annexation request that will follow that;
2 isn't that correct?

3 A At some point in time I would assume
4 that would be true, yes.

5 Q And do you know whether there is one
6 currently being prosecuted by landowners within
7 that area?

8 A I'm not real sure what you're asking
9 me. I have not had any recent conversations with
10 landowners in the South Schulte area.

11 INTERVENOR BLACKWELL: Okay, thank you.

12 APPLICANT COUNSEL GRATTAN: No
13 questions.

14 HEARING OFFICER TOMPKIN: Any redirect,
15 Mr. Bakker?

16 INTERVENOR BAKKER: No.

17 HEARING OFFICER TOMPKIN: All right.

18 Thank you.

19 PRESIDING COMMISSIONER PERNELL: Thank
20 you, Mr. Reeds.

21 (Thereupon, the witness was
22 excused from the stand.)

23 INTERVENOR SELIGMAN: Members of the
24 Commission, just to briefly interrupt, I neglected
25 to move the introduction of the testimony by

1 Mr. Hulse and I would like to have that considered
2 at that time, if possible.

3 INTERVENOR BAKKER: And I would like to
4 move the testimony of Mr. Reeds into evidence as
5 well.

6 HEARING OFFICER TOMPKIN: Is there any
7 objection?

8 APPLICANT COUNSEL GRATTAN: No
9 objection.

10 HEARING OFFICER TOMPKIN: Hearing no
11 objection, the testimony of both Mr. Reeds and
12 Mr. Hulse will be admitted in evidence.

13 HEARING OFFICER TOMPKIN: Okay. It's
14 my understanding that that concludes the testimony
15 on Land Use.

16 I understand there is a pending motion
17 from Mr. Sarvey to reopen testimony on the Well
18 Head issue. And the committee has read the moving
19 papers and has considered your request. That
20 request will be denied at this time. It's not
21 necessary and it's not deemed relevant for this
22 proceeding, in terms of what was articulated in
23 the motion.

24 So that request will be denied; that
25 will not be reopened.

1 INTERVENOR SARVEY: I'd just like to
2 request that the deliberations are entered into
3 the administrative record. Thank you.

4 HEARING OFFICER TOMPKIN: I'm sorry, I
5 missed that. I didn't quite understand what you
6 said.

7 INTERVENOR SARVEY: I'd just like to
8 ask that all these deliberations are entered into
9 the administrative record. Thank you.

10 HEARING OFFICER TOMPKIN: Thank you.

11 At this time, then, there being no
12 further evidence in the area of Land Use we will
13 close that topic area. And I believe we have
14 closed all previous topic areas as well, but if we
15 have not, those topic areas --

16 STAFF COUNSEL WILLIS: Staff would like
17 to reopen the Water area just for the entry of the
18 revised condition Three and a new condition Five
19 that would address the use or prohibiting the use
20 of groundwater. And I believe all parties have a
21 copy of the proposed soil and water errata.

22 HEARING OFFICER TOMPKIN: We'll go off
23 the record briefly.

24 (Thereupon, a recess was
25 held off the record.)

1 HEARING OFFICER TOMPKIN: A document or
2 a one-page document entitled Soil and Water Errata
3 has been provided to all parties, and the staff is
4 requesting that these clarifications contained on
5 this document be made or substituted for those
6 that are currently in the record.

7 So at this time I'm going to ask is
8 there any objection from the parties to what is
9 contained in this document entitled Soil and Water
10 Errata?

11 APPLICANT COUNSEL GRATTAN: No; in
12 fact, Soil and Water Three, I believe, the
13 applicant offered in response to the City of
14 Tracy's concern with potential pumping of
15 groundwater, and I believe -- Is it Three or Five?

16 STAFF COUNSEL WILLIS: It's Five.

17 APPLICANT COUNSEL GRATTAN: Five, and
18 we have agreed that we will not pump groundwater,
19 and agreed to verification conditions. So we
20 support the staff errata.

21 HEARING OFFICER TOMPKIN: What I'm
22 going to do is mark this document as Exhibit 64
23 for identification.

24 (Thereupon, the above-referenced
25 document was marked as Staff's

1 Exhibit 64 for identification.)

2 HEARING OFFICER TOMPKIN: And hearing
3 no objection to Exhibit 64, Exhibit 64 will be
4 admitted in evidence.

5 (Thereupon, the above-referenced document,
6 marked as Staff's Exhibit 64 for
7 identification, was received into evidence.)

8 HEARING OFFICER TOMPKIN: At this time,
9 then, we will close all topic areas, including
10 Land Use and Soil and Water, and any one that we
11 may not have previously.

12 APPLICANT COUNSEL GRATTAN: Madam
13 Hearing Officer, we have a few housekeeping --
14 keeping track of the exhibits here, we have a few
15 housekeeping items that we'd like to make sure got
16 into the exhibits, and I'd like to move them in.
17 These are largely in non-controversial areas.

18 All set?

19 HEARING OFFICER TOMPKIN: All right.

20 APPLICANT COUNSEL GRATTAN: In the
21 General area, we would like to move in the Data
22 Responses, all of them submitted November 9th,
23 2001.

24 We'd like to move in -- I'll go slower,
25 so we can number them.

1 HEARING OFFICER TOMPKIN: So these have
2 to be numbered, they're not included in any other
3 document that's currently --

4 APPLICANT COUNSEL GRATTAN: I don't
5 believe so. Oh, I'm sorry, those data responses
6 were -- they were listed on the applicant's
7 exhibit list, but I don't believe they were listed
8 on the committee's exhibit list.

9 HEARING OFFICER TOMPKIN: Okay. So the
10 November 9th, 2001 --

11 APPLICANT COUNSEL GRATTAN: Correct.

12 HEARING OFFICER TOMPKIN: -- data
13 responses are being offered at this time.

14 Is there any objection to that
15 document?

16 Hearing no objection, that will be
17 marked as Exhibit 65 for identification and
18 admitted in evidence.

19 (Thereupon, the above-referenced document
20 was marked as Staff's Exhibit 65 for
21 identification and received into evidence.)

22 APPLICANT COUNSEL GRATTAN: And the
23 next is the complete Wet Weather Construction Plan
24 supplement. We've had witnesses testify to
25 various parts of it, I believe that's complete,

1 and that was submitted December 11th, 2001.

2 HEARING OFFICER TOMPKIN: The document
3 described by counsel will be marked as Exhibit 66
4 for identification.

5 (Thereupon, the above-referenced
6 document was marked as Staff's
7 Exhibit 66 for identification.)

8 HEARING OFFICER TOMPKIN: Is there any
9 objection to Exhibit 66?

10 APPLICANT COUNSEL GRATTAN: And next,
11 generally I'd like to move in, since we went
12 through it --

13 HEARING OFFICER TOMPKIN: Well, let me
14 go ahead and finish 66.

15 APPLICANT COUNSEL GRATTAN: I'm sorry.

16 HEARING OFFICER TOMPKIN: Hearing no
17 objection, Exhibit 66 will be admitted in
18 evidence.

19 (Thereupon, the above-referenced document,
20 marked as Staff's Exhibit 66 for
21 identification, was received into evidence.)

22 HEARING OFFICER TOMPKIN: All right.

23 APPLICANT COUNSEL GRATTAN: I'd like to
24 move in the applicant's prefiled testimony,
25 submitted January 24th, 2002.

1 HEARING OFFICER TOMPKIN: All right.

2 The prefiled testimony will be marked as
3 Exhibit 67.

4 (Thereupon, the above-referenced
5 document was marked as Staff's
6 Exhibit 67 for identification.)

7 APPLICANT COUNSEL GRATTAN: And the --

8 HEARING OFFICER TOMPKIN: Is there any
9 objection to Exhibit 67?

10 Hearing no objection, Exhibit 67 will
11 be admitted in evidence.

12 (Thereupon, the above-referenced document,
13 marked as Staff's Exhibit 67 for
14 identification, was received into evidence.)

15 APPLICANT COUNSEL GRATTAN: And the
16 applicant's revised testimony, submitted
17 February 13th, 2000 (sic).

18 HEARING OFFICER TOMPKIN: Okay. That
19 document will be marked as Exhibit 68 for
20 identification.

21 (Thereupon, the above-referenced
22 document was marked as Staff's
23 Exhibit 68 for identification.)

24 HEARING OFFICER TOMPKIN: Is there any
25 objection to Exhibit 68?

1 Hearing no objection, Exhibit 68 will
2 be admitted in evidence.

3 (Thereupon, the above-referenced document,
4 marked as Staff's Exhibit 68 for
5 identification, was received into evidence.)

6 APPLICANT COUNSEL GRATTAN: And another
7 set of Data Responses. These are the data
8 responses submitted by the applicant on
9 December 28th, 2001.

10 HEARING OFFICER TOMPKIN: The data
11 responses will be marked as Exhibit 69 for
12 identification.

13 (Thereupon, the above-referenced
14 document was marked as Staff's
15 Exhibit 69 for identification.)

16 HEARING OFFICER TOMPKIN: Is there any
17 objection to Exhibit 69?

18 Hearing no objection, Exhibit 69 will
19 be admitted in evidence.

20 (Thereupon, the above-referenced document,
21 marked as Staff's Exhibit 69 for
22 identification, was received into evidence.)

23 APPLICANT COUNSEL GRATTAN: And next,
24 these are under the topic area of Biology. They
25 have, as I recollect, been sponsored but not

1 admitted into evidence, and the first is the
2 proposed coverage under the San Joaquin
3 Multispecies Conservation Plan. The applicant
4 submitted this September 6th, 2001.

5 HEARING OFFICER TOMPKIN: The document
6 described by counsel will be marked as Exhibit 70
7 for identification.

8 (Thereupon, the above-referenced
9 document was marked as Staff's
10 Exhibit 70 for identification.)

11 HEARING OFFICER TOMPKIN: Is there any
12 objection to Exhibit 70?

13 Hearing no objection, Exhibit 70 is
14 admitted in evidence.

15 (Thereupon, the above-referenced document,
16 marked as Staff's Exhibit 70 for
17 identification, was received into evidence.)

18 APPLICANT COUNSEL GRATTAN: And the
19 next is the technical advisory committee findings
20 submitted October 10th, 2001.

21 HEARING OFFICER TOMPKIN: The document
22 described by counsel will be marked as Exhibit 71
23 for identification.

24 (Thereupon, the above-referenced
25 document was marked as Staff's

1 Exhibit 71 for identification.)

2 HEARING OFFICER TOMPKIN: Is there any
3 objection to Exhibit 71?

4 Hearing no objection, Exhibit 71 is
5 admitted in evidence.

6 (Thereupon, the above-referenced document,
7 marked as Staff's Exhibit 71 for
8 identification, was received into evidence.)

9 APPLICANT COUNSEL GRATTAN: Next is
10 what is called the RANA, R-A-N-A, report,
11 submitted December 28th, 2001.

12 HEARING OFFICER TOMPKIN: The RANA
13 report will be marked as Exhibit 72 for
14 identification.

15 (Thereupon, the above-referenced
16 document was marked as Staff's
17 Exhibit 72 for identification.)

18 HEARING OFFICER TOMPKIN: Is there any
19 objection to Exhibit 72?

20 Hearing no objection, Exhibit 72 is
21 admitted in evidence.

22 (Thereupon, the above-referenced document,
23 marked as Staff's Exhibit 72 for
24 identification, was received into evidence.)

25 APPLICANT COUNSEL GRATTAN: Next is the

1 supplemental Biological Resources assessment
2 letter, which the applicant submitted
3 December 25th, 2001. That's how hard we all
4 worked on this project here.

5 HEARING OFFICER TOMPKIN: All right.
6 The supplemental letter will be marked as
7 Exhibit 73 for identification.

8 (Thereupon, the above-referenced
9 document was marked as Staff's
10 Exhibit 73 for identification.)

11 HEARING OFFICER TOMPKIN: Is there any
12 objection to Exhibit 73?

13 APPLICANT COUNSEL GRATTAN: And next,
14 under Agricultural and Soils --

15 HEARING OFFICER TOMPKIN: Exhibit 73 is
16 in evidence.

17 (Thereupon, the above-referenced document,
18 marked as Staff's Exhibit 73 for
19 identification, was received into evidence.)

20 HEARING OFFICER TOMPKIN: You may
21 proceed.

22 APPLICANT COUNSEL GRATTAN: -- we have
23 a letter from the Department of Conservation to
24 the California Energy Commission which was
25 submitted September 27th, 2001.

1 HEARING OFFICER TOMPKIN: The letter
2 will be marked as Exhibit 74 for identification.

3 (Thereupon, the above-referenced
4 document was marked as Staff's
5 Exhibit 74 for identification.)

6 APPLICANT COUNSEL GRATTAN: And under
7 Land Use, we have --

8 HEARING OFFICER TOMPKIN: Is there any
9 objection to Exhibit 74?

10 APPLICANT COUNSEL GRATTAN: I'm sorry,
11 I keep outrunning you, Madam Hearing Officer, I
12 apologize.

13 HEARING OFFICER TOMPKIN: Hearing no
14 objection to Exhibit 74, 74 is in evidence.

15 (Thereupon, the above-referenced document,
16 marked as Staff's Exhibit 74 for
17 identification, was received into evidence.)

18 HEARING OFFICER TOMPKIN: All right.

19 APPLICANT COUNSEL GRATTAN: And under
20 Land Use, we have the certificate of compliance,
21 which was required by staff proposed condition
22 Land Use One, which the applicant submitted
23 February I believe 2002.

24 HEARING OFFICER TOMPKIN: All right.
25 The certificate of compliance will be marked as

1 Exhibit 75 for identification.

2 (Thereupon, the above-referenced
3 document was marked as Staff's
4 Exhibit 75 for identification.)

5 HEARING OFFICER TOMPKIN: Is there any
6 objection to Exhibit 75?

7 Hearing no objection, Exhibit 75 is
8 admitted in evidence.

9 (Thereupon, the above-referenced document,
10 marked as Staff's Exhibit 75 for
11 identification, was received into evidence.)

12 APPLICANT COUNSEL GRATTAN: That's all
13 the housekeeping that I have at this point, and
14 thank you very much.

15 HEARING OFFICER TOMPKIN: All right.
16 Is there anything further before we close the
17 topic areas? Mr. Sarvey?

18 INTERVENOR SARVEY: Yeah, I would like
19 to request copies of the applicant's documents
20 that were just submitted. As most of them were
21 submitted before I became an intervenor, I'd like
22 to have copies of them, if I could, please.

23 HEARING OFFICER TOMPKIN: Can you make
24 those available, Mr. Grattan?

25 APPLICANT COUNSEL GRATTAN: Yes.

1 Mr. Sarvey, you're very eloquent, but sometimes
2 inaudible. Which documents were those that you
3 would like?

4 INTERVENOR SARVEY: The documents that
5 you submitted before I intervened, and I believe
6 the date I intervened was December 9th.

7 APPLICANT COUNSEL GRATTAN:
8 December 9th?

9 INTERVENOR SARVEY: Yes. Thank you,
10 Mr. Grattan.

11 APPLICANT COUNSEL GRATTAN: All right,
12 I'll collect those.

13 HEARING OFFICER TOMPKIN: Okay, thank
14 you.

15 Hearing nothing further, all topic
16 areas are now closed.

17 At this point we will proceed with
18 closing arguments. As previously indicated, the
19 time limit for closing arguments will be a maximum
20 of 20 minutes, and you will be timed.

21 (Laughter.)

22 COMMISSIONER LAURIE: Commissioner
23 Pernell and Madam Hearing Officer, if I may, it's
24 my understanding that, and correct me if I'm
25 wrong, which I'm sure you will, that there will be

1 an opportunity for submission of written closing
2 arguments as well; is that correct or no?

3 PRESIDING COMMISSIONER PERNELL: That
4 is correct.

5 COMMISSIONER LAURIE: Okay.

6 PRESIDING COMMISSIONER PERNELL: And if
7 you would like to submit in writing rather than
8 orally today, you can also do that.

9 COMMISSIONER LAURIE: Okay. So I guess
10 the point is that if you want to get down into
11 legal technical detail, that's probably best saved
12 for your written arguments. If you want to talk
13 about legal concepts that you're going to be
14 addressing in your written document, then that
15 might be a little bit more appropriate, to know
16 what we should be expecting.

17 INTERVENOR BLACKWELL: And when would
18 written closing documents be required?

19 HEARING OFFICER TOMPKIN: We will give
20 you two weeks from today, and there would be a
21 maximum page length of 15 pages, which is quite
22 generous given the number of people involved here.

23 APPLICANT COUNSEL GRATTAN: At this
24 point can we ask when the final transcripts will
25 be available?

1 HEARING OFFICER TOMPKIN: We don't
2 know. We understand that there are quite a number
3 of transcripts that have been requested on various
4 projects.

5 APPLICANT COUNSEL GRATTAN: The
6 transcripts, at my last check, were available on
7 the web site, and they went up to March 8th, I
8 believe. So we would have the 13th, 14th and
9 28th --

10 HEARING OFFICER TOMPKIN: Still
11 outstanding.

12 APPLICANT COUNSEL GRATTAN: -- still
13 out.

14 COMMISSIONER LAURIE: I should also
15 note that if it's an issue of not being able to
16 prepare your argument sufficiently until the
17 transcript is out, of course, the parties are
18 aware that there is an opportunity to comment from
19 the transcript when you comment on the PMPD,
20 whatever that might say. Whether you consider
21 that too late or not, I don't know, but the PMPD
22 will be making reference to specific points in the
23 evidence --

24 PRESIDING COMMISSIONER PERNELL: And
25 that is the presiding member's proposed decision.

1 COMMISSIONER LAURIE: It took me three
2 and a half years to understand what a PMPD --

3 (Laughter.)

4 COMMISSIONER LAURIE: Thank you,
5 Commissioner Pernell.

6 HEARING OFFICER TOMPKIN: All right.
7 Then we will proceed with closing arguments at
8 this time and we'll begin with the applicant.

9 APPLICANT COUNSEL GRATTAN: And I was
10 going to waive my closing until the end, but I
11 won't.

12 I'll be very brief here. This has been
13 a marathon, and the marathon runner, the finish of
14 marathons aren't pretty, but they can be brave.

15 CLOSING ARGUMENT ON BEHALF OF THE APPLICANT

16 APPLICANT COUNSEL GRATTAN: My view of
17 things on behalf of GWF is it's projects like this
18 which is why we have an Energy Commission, why the
19 Energy Commission was created. A little bit of
20 history:

21 In the early to mid-70s we had an
22 energy crisis nationwide. My understanding was in
23 California that the major utilities were proposing
24 nuclear power plants every 50 miles or so up the
25 California coast, and California communities were

1 either denying or planning to deny conditional use
2 permits to these. And some of them actually,
3 however, because the utilities had either credible
4 arguments or a fair amount of influence, some of
5 them were built.

6 But the situation was not very tenable
7 for the citizens of the State of California. So
8 the Legislature, Senator Al Alquist and Senator,
9 excuse me, Assemblyman Charlie Warren, authors,
10 the Legislature passed the Warren-Alquist Act.
11 And this was signed by then Governor Reagan. And
12 the principle behind the Warren-Alquist Act was
13 that power is something that has a statewide need,
14 a statewide implication, and that, however, if
15 power plants were to be cited, they were to be
16 cited taking the statewide need into
17 consideration.

18 And that a thorough environmental
19 review would be performed by an independent and
20 professionally capable, in fact, professionally
21 excellent staff, and that the Commission could not
22 approve a power plant absent very stringent
23 findings of overriding consideration. They could
24 not approve a power plant if the power plant
25 caused any significant environmental impact, or

1 any significant impact to health and safety. And
2 they could not approve a power plant if it did not
3 comply with applicable laws, ordinances,
4 regulations, and standards.

5 In my view, that's what we have here.
6 We have nobody wants a power plant, but in
7 California we need power plants and we can make
8 them conform. We can make them be good
9 environmental citizens, and we can make the
10 applicant or developer of a power plant act as a
11 good citizen in running that power plant. These
12 are issues of science, these are issues of law,
13 and the Commission is the guardian of that. These
14 are not necessarily issues of applause meter.

15 I believe that the Commission and the
16 staff have shown an incredible amount of
17 diligence. The applicant has resisted some of
18 that diligence, but all in all, I think the public
19 has been served.

20 There is also the issue of public
21 participation. I know that this is, the Energy
22 Commission's process is a little foreign when one
23 comes into a local government, when one comes into
24 the County of San Joaquin, when one comes into the
25 City of Tracy sphere of influence.

1 I believe that the public has been
2 heard. It's been difficult. I understand the
3 frustration, but I'd like to take this
4 opportunity, at least as a symbol or as a
5 paradigm, to salute one of the members of the
6 public, and by saluting that member I don't mean
7 to exclude any others, but my able opponent,
8 Mr. Bob Sarvey, has managed to crack this process,
9 managed to understand it, managed to get the
10 applicant to agree to reconsider its hours of
11 operation in a plan, and also to go out and
12 produce or procure some local offsets.

13 I thank the committee, I thank the
14 staff, I thank the folks across the table. I
15 think it's been a good process, and again, I
16 salute the citizens of Tracy, and I salute
17 specifically Bob Sarvey. Thank you.

18 PRESIDING COMMISSIONER PERNELL: Thank
19 you, Mr. Grattan.

20 HEARING OFFICER TOMPKIN: All right.
21 We'll proceed to Ms. Willis.

22 STAFF COUNSEL WILLIS: Thank you.

23 CLOSING ARGUMENT ON BEHALF OF THE STAFF

24 STAFF COUNSEL WILLIS: I also want to
25 just start by thanking the intervenors and the

1 public for their participation, especially
2 Mr. Sarvey for the input that he has provided.

3 Staff has reviewed all of the comments
4 that have come from the public and from the
5 agencies, whether they be by e-mail or by letter
6 or by phone or at a public meeting such as this,
7 all the comments have been reviewed and we have
8 listened.

9 Staff thoroughly reviewed this proposed
10 application, and we review that for potential
11 environmental impacts, for potential health and
12 safety impacts, and for engineering impacts.
13 We've provided considerable conditions of
14 certification in this document that we believe, if
15 adopted by this Commission, would ensure that this
16 project would not pose any adverse impacts,
17 significant adverse impacts to the environment, to
18 public health and safety or in engineering.

19 In some cases we actually asked the
20 applicant to go beyond what is actually required.
21 For instance, in the area of air quality, we asked
22 the applicant to look locally for the emission
23 reduction credits and for PM10 reduction, for
24 actual PM10 reduction, and they did. They
25 responded in the form of a condition and that's

1 the local air quality enhancement package, and we
2 were very pleased with this proposal.

3 The one area that staff and applicant
4 have not agreed on is in the area of noise
5 impacts. Staff is requiring a consistent noise
6 performance level, analyzing in the same manner as
7 we have many, many, many other projects throughout
8 the years -- This was not done any differently --
9 and we do believe that this level is consistent
10 and it is something that the applicant has not
11 provided substantial evidence for the record that
12 they cannot meet, either technically or
13 economically.

14 Staff also looks at the federal, state,
15 regional and local laws, ordinances, regulations,
16 and standards, and we did consider the comments
17 made by the City of Tracy through the various
18 public meetings that we've had earlier, before the
19 evidentiary hearings. And those comments and
20 comments by the other intervenors were basically
21 the reason why we totally revised our Land Use
22 section in the supplement.

23 Having said that, staff has reviewed
24 the laws as we see it, and we did determine that
25 the County LORS were the applicable LORS, and thus

1 we determined that this project would meet those
2 LORS. That was based upon input from the County
3 via the letter of September 18th and also further
4 discussions with our staff and the County.

5 I probably will leave most of the
6 discussion on the site approval process for
7 briefing, but just suffice to say that having
8 reviewed the site approval process, we fully
9 believe that our process through the Energy
10 Commission covers all of the areas that would be
11 addressed by the site approval process. Our staff
12 did not ask the questions on site approval because
13 the County does not have that jurisdiction,
14 Mr. Hulse was fully correct in his testimony.

15 The approval for that site rests solely
16 with this Commission, and we do believe that
17 through the entire staff assessment and supplement
18 we have addressed all of the issues that would be
19 included in that.

20 So just in conclusion, we just want to
21 thank again the public for their participation and
22 the committee and Madam Hearing Officer.

23 HEARING OFFICER TOMPKIN: Thank you,
24 Ms. Willis.

25 PRESIDING COMMISSIONER PERNELL: Thank

1 you.

2 HEARING OFFICER TOMPKIN: At this time
3 we'll proceed to the intervenors and we'll allow
4 Mr. Seligman to go first.

5 INTERVENOR SELIGMAN: They want the old
6 man to go as the last attorney, so I guess the
7 others will go first.

8 (Laughter.)

9 HEARING OFFICER TOMPKIN: Okay.

10 INTERVENOR WEED: Thank you. Michael
11 Weed on behalf of intervenor Larry Chang.

12 CLOSING ARGUMENT ON BEHALF OF INTERVENOR WEED

13 INTERVENOR WEED: I'd also like to
14 briefly take the opportunity to congratulate the
15 applicant and its counsel on the professional
16 manner in which they've conducted the hearings,
17 and the respect that they've shown for all the
18 other parties to these proceedings as well as the
19 Commission staff.

20 I agree with Mr. Grattan's comments
21 that the Commission must make a finding of
22 compatibility with local ordinances, rules, and
23 standards in order to approve the application, or
24 else make findings of overriding consideration.
25 It's my position and that of Larry Chang that

1 these findings of compatibility with County laws
2 and regulations cannot be made.

3 The letter of September 18th, 2001 is
4 essentially the only evidence in the record
5 regarding compatibility with County LORS, and I
6 believe on its face is clearly not an adequate
7 discussion of the many, many issues that the
8 County would consider if it were processing or
9 looking at siting a power plant in this location.
10 That conclusion was confirmed by Mr. Hulse's
11 testimony today. As we all know, he is the party
12 that executed the letter.

13 He confirmed that the letter was not
14 intended to be a comprehensive discussion or
15 analysis of significant issues that the County
16 would look at if it were proposing to site a power
17 plant in this location, including but not limited
18 to the issues of air quality and compatibility
19 with planned adjoining land uses.

20 Mr. Hulse also confirmed that County
21 standards and procedures would require, due to the
22 opposition of the City of Tracy, that public
23 hearings before the Planning Commission and most
24 likely the Board of Supervisors would occur, and
25 that a decision of this kind would not be made by

1 staff at an administrative level. And he also
2 confirmed that the determination of these bodies
3 would seriously consider the concerns of the City
4 of Tracy, which are obviously embodied in the
5 general and specific plans that the City of Tracy
6 has painstakingly adopted over these last several
7 years.

8 Mr. Reeds testified today that the
9 proposed plan is simply incompatible with those
10 planning documents in that planning process that
11 the City of Tracy has undertaken and invested so
12 much time and effort in. Although these are valid
13 technical arguments that I think can be made and
14 should be made and considered by the Commission in
15 making its determination on this application, I
16 don't think they're the most important.

17 To me, the most important issues here
18 are that the elected officials of the two
19 political bodies that are the most affected -- the
20 County of San Joaquin and the City of Tracy --
21 have, as representatives of their citizens,
22 clearly indicated their position on the plant, and
23 that position is in opposition to siting this
24 plant in this location.

25 And I think that's the most important

1 piece of evidence, and that's what should be
2 foremost in the minds of the Commissioners when
3 they consider the application. Thank you.

4 HEARING OFFICER TOMPKIN: Thank you.

5 PRESIDING COMMISSIONER PERNELL: Thank
6 you.

7 CLOSING ARGUMENT ON BEHALF OF INTERVENOR BAKKER

8 INTERVENOR BAKKER: I'd like to thank
9 the committee for providing the City with an
10 opportunity to make a brief closing statement. I
11 too would like to thank the applicant, applicant's
12 counsel and the staff for their work on this
13 project. They made it very easy for us to get the
14 documents we needed and do the review we needed to
15 do at the late date that we intervened, so thank
16 you all very much.

17 For a number of reasons, the City of
18 Tracy believes that this project should not and
19 cannot be approved by the Commission. The City of
20 Tracy, as you all know, has spent a great deal of
21 time, effort and money planning the area around
22 the TPP site, and is extremely concerned with the
23 TPP's expansion of the pre-existing industrial
24 area, the effects of which the City is attempting
25 to minimize and eliminate as part of its planning

1 process for the area.

2 The approval of this project would have
3 the potential to frustrate the City's planning in
4 this area. First of all, the record in this case
5 does not support the finding the Commission must
6 make, that the project is consistent with the
7 County's LORS. The record is undisputed that were
8 the County the permitting agency, a site approval
9 permit would be required.

10 To grant such a permit, as you've
11 heard, five findings must be made. The applicant
12 and staff failed to present any evidence to
13 support those findings. Instead, the applicant
14 and staff took the untenable position that the
15 Commission is not required to consider or make
16 those findings to approve the project.

17 The City of Tracy believes that it is
18 absurd to suggest, as have staff and the
19 applicant, that this project could be approved
20 without any responsible body making site approval
21 findings. Under well-accepted zoning and planning
22 principles, conditional uses like the TPP site or
23 a power plant for that matter are not permitted as
24 a matter of right.

25 Rather, conditional uses are only

1 permitted if the prevailing body or officer makes
2 various findings concerning the use suitability
3 for the site and its surroundings. Accordingly,
4 the Commission, as the only permitting agency,
5 since this is a power plant in excess of 50
6 megawatts, must make those findings.

7 Secondly, the City of Tracy's planning
8 documents are relevant LORS under the Warren-
9 Alquist Act with which the Commission must find
10 consistency. The undisputed evidence in the
11 record is that the project is inconsistent with
12 the City's planning documents for the site.

13 Thirdly, the reason why we're in this
14 position is because the Commission staff failed to
15 comply with Commission rules and regulations that
16 are designed to ensure that the input of land use
17 agencies are thoroughly incorporated into
18 Commission decision-making. Therefore, it's not
19 surprising that the committee and the record is in
20 the circumstances that it's in, with both agencies
21 with land use jurisdiction asserting inconsistency
22 with their LORS.

23 The City would respectfully request
24 that the committee recommend disapproval to the
25 Commission. Thank you.

1 CLOSING ARGUMENT ON BEHALF OF INTERVENOR SELIGMAN

2 INTERVENOR SELIGMAN: After more than
3 40 years of practice, I never thought that I would
4 be engaged in a new experience such as I have just
5 gone through, and it was been one, certainly one
6 of the highlights of my practice.

7 San Joaquin County, the City of Tracy
8 and its residents, including my client, Charles
9 Tusso, want to believe that this hearing is more
10 than a pro forma process and more than an exercise
11 in patience, but will result in a good-faith
12 deliberation as to whether or not the proposed GWF
13 project should be approved or denied.

14 Except for the presentation made by and
15 on behalf of GWF, the evidentiary hearings
16 demonstrated to the Commission that this proposed
17 project is in the wrong location. As suggested in
18 last week's editorial in The Record, the best
19 course of action is for this Commission to make an
20 order calling upon GWF to, quote, "step back and
21 rethink the project," end of quote.

22 GWF and its experts have made a very
23 high-powered, effective and professional
24 presentation, not the least of which was Jennifer
25 Hernandez, who is present here today, to support

1 its efforts to obtain approval of this project at
2 the proposed site. It has dotted its i's, crossed
3 its t's, and it's not my intention to restate the
4 testimony and evidence presented.

5 What is clear, however, from the
6 presentation made by all of the opponents to the
7 project that have participated in this hearing is
8 the fact that they have collectively made a
9 reasonable showing to support the conclusion that
10 this project should be denied. This was
11 highlighted in the presentations made to the
12 Commission, most specifically in the areas of Air
13 Pollution, Visual Resources, the inappropriateness
14 of this project being located in the proposed
15 agricultural zone, and the adverse impact that it
16 would create to the Tracy community.

17 There is nothing in the evidence by
18 which the Commission must conclude that this
19 project is required to be located at this site. A
20 non-agricultural zone could also provide access to
21 natural gas, electric transmission, and water.
22 Mr. Hulse clarified his own letter to the
23 Commission, not only re-emphasizing the fact that
24 the purpose of the letter was to be informational
25 only as opposed to conclusionary, and that it was

1 not his intent to indicate that the existence of
2 natural gas, electric transmission, and water
3 nearby requires this project to be located at the
4 proposed site. All that was intended by San
5 Joaquin County's communication to the Commission
6 was to indicate existing additional requirements
7 in the event that a power plant desired to be
8 located in an agricultural zone, over which the
9 County had jurisdiction.

10 Mr. Hulse further testified that
11 additional findings, as contained in Section
12 9-818.6 of the County's ordinances would have to
13 be made if the project were to be located in an
14 agricultural zone. That and Section 9605 need to
15 be considered together, as part of the County's
16 LORS, based on the facts presented in each case.
17 Both sections are adjudicatory in nature.

18 There was no intent to limit the County
19 LORS just to the additional requirements of a
20 power plant to be located in an ag zone. It is
21 quite clear that the contents of that letter
22 cannot be used to conclude that San Joaquin County
23 supports this application. Quite to the contrary,
24 not only do we have the opposition of the County
25 Board of Supervisors, but the evidence also

1 demonstrates that this project does not comply
2 with the LORS of San Joaquin County, which has
3 exclusive jurisdiction over this project.

4 To the extent that the County staff
5 mentioned, makes reference only to the one section
6 that was cited in Mr. Hulse's letter. The same
7 argument could be made that the additional section
8 in connection with the required findings is also a
9 part of the LORS of San Joaquin County, which
10 deserves equal status with the other section.

11 Your own staff has recognized that an
12 electric power plant is an industrial use, more
13 appropriately to be located in an industrial zone.
14 The fact that the proposed site, zoned
15 agriculture, is in relatively close proximity to
16 existing industrial uses should not allow the
17 Commission to conclude that it is appropriate to
18 expand the industrial area by adding another
19 industrial use, especially in a non-industrially-
20 zoned area. Just because there are existing
21 industries already in place does not mean that San
22 Joaquin County or the Tracy community need more,
23 especially if it has to cross the tracks, which
24 has been and continues to be a natural boundary
25 insofar as that particular use is concerned.

1 This is especially the case when you
2 consider the continuing growth and development,
3 especially residential, that has been occurring
4 within Tracy, subsequent to the industries that
5 are already in existence. Your staff has also
6 recognized that there is an overlap insofar as
7 this proposed project is concerned, between San
8 Joaquin County and the City of Tracy.

9 Even though this area, from a planning
10 standpoint, is presently within the exclusive
11 jurisdiction of San Joaquin County and has not yet
12 been annexed to the City of Tracy, sufficient
13 evidence has been provided to this Commission
14 warranting its conclusion that the overall impact
15 on the Tracy community of this proposed project
16 has not been adequately analyzed or assessed.

17 CEC staff recognizes that this proposed
18 site is within a rapidly increasing development
19 within the Tracy area, substantially residential
20 in nature. This includes Mountain House
21 community, which is presently underway, the Red
22 Bridge residential subdivision located within less
23 than a mile from the proposed site, which is an
24 upscale, residential neighborhood of homes ranging
25 from \$250,000 to a million dollars in value.

1 It's within the approved South Schulte
2 planning area, within a proposed school and church
3 within one and a half miles east of the proposed
4 site; within close proximity to the identification
5 of contemplated schools within Tracy Unified and
6 Jefferson Elementary School Districts. Within
7 six-tenths of a mile of the Tracy Hills
8 residential development, which is already within
9 the city limits and within less than a mile to the
10 east of the project, single-family ranchettes.

11 Just because the proposed site has not
12 been annexed to the City of Tracy but is obviously
13 within its sphere of influence does not justify
14 the lack of assessment and analysis of Tracy's
15 overall plans and development, both within the
16 existing city limits as well as its planned future
17 land uses.

18 The information provided to the
19 Commission during the course of the evidentiary
20 hearings provides a reasonable showing that the
21 staff assessment needs to be supplemented to
22 address the possible impacts of the proposed
23 project on Tracy as it presently exists, as well
24 as its planned future land uses. The existing
25 assessment and the position presented to the

1 Commission by GWF reflects not only
2 incompatibility but indifference to the Tracy
3 area.

4 The decision of this Commission, which
5 I hope will not be a rubber stamp for this
6 proposed project, goes to the very issue of
7 quality of life to which the present and future
8 residents of Tracy and the residents within the
9 surrounding area are entitled. As the Commission
10 is aware, both the San Joaquin County Board of
11 Supervisors and the Tracy City Council have passed
12 separate resolutions unanimously opposing this
13 project.

14 This is in addition to the individual
15 intervenors in this action, the public that has
16 participated in the hearings, and the petitions
17 filed with this Commission reflecting over 1,000
18 signatures of the Tracy community. A strong sense
19 of community, both within the city limits and in
20 the surrounding areas has been strongly provided
21 to this Commission.

22 Are you going to force this on the
23 community and the County or recognize that this is
24 not the right location? Your decision not only
25 affects significant land values to my client, but

1 also will go far to determine the manner in which
2 Tracy is able to make its own decisions in the
3 manner in which it wants to grow, in the manner in
4 which it wants to develop, and for San Joaquin
5 County to be able to make its decision to ensure
6 an appropriate quality of life to those who desire
7 to live within an agricultural setting within the
8 area.

9 The combination of single-family
10 residential expansion and rural elegance would be
11 severely negatively impacted by this project. It
12 also goes to the issue of the negative impact on
13 the value of my client's property and its possible
14 use for planned residential development if this
15 type of facility was located next door.

16 To what extent can you guarantee that
17 there will be no impact for overall air quality
18 issues, noise, visual, land values or quality of
19 life? The railroad tracks have been a natural
20 boundary to my clients with industrial uses on the
21 other side. Now industrial uses are being
22 threatened on this side of the tracks, a
23 significant change in land use and a significant
24 negative impact to my clients.

25 What GWF did not do is to convince you

1 that this is the right location for this project.
2 But what this County, City and community did do
3 was to substantially demonstrate for the reasons I
4 have just presented to you and that were presented
5 in the evidentiary hearing that this is the wrong
6 place for this peaker power plant.

7 PRESIDING COMMISSIONER PERNELL: Thank
8 you.

9 (Applause.)

10 INTERVENOR SUNDBERG: He's a hard act
11 to follow.

12 CLOSING ARGUMENT ON BEHALF OF INTERVENOR SUNDBERG

13 INTERVENOR SUNDBERG: First things
14 first, I need to thank everyone that's
15 participated in this hearing. It's been just an
16 incredible process, to say the least, and I need
17 to thank the Commission for bringing your staff to
18 Tracy. I know you did not have to do that, and we
19 do truly appreciate that.

20 Every day is one more news breaking
21 story with headlines reading daily, news of Enron,
22 California is paying twice the amount for
23 electricity, gas has erupted and exploded, mains
24 have exploded, danger and corruption have seemed
25 to go hand in hand with the electrical companies

1 that are coming our way.

2 Our headlines in Tracy read, "Fire,"
3 and again in 1996. For the same company the
4 headlines read, "Biomass Wood Chips Burning." Our
5 fire alarm logs consistently show that the Biomass
6 plant has had self-combusting fires. In 1996 the
7 fire was 17 alarms and burned for three days, yet
8 it was not mentioned in the AFC, nor was the fire
9 of 1990.

10 As in any study, any one of us knows if
11 we've taken a statistics class, the numbers and
12 the facts can be skewed, only being represented by
13 what you want them to represent. The latest of
14 the alarming headlines read this week, "Turbines
15 Arrive Prematurely at Proposed Peaker Site." GWF
16 can't even manage their own delivery schedule. We
17 can add this to the list of inappropriate conduct
18 being conducted by this business within our
19 community.

20 While GWF is knocking at our doorstep
21 to build, in their own documents they've stated
22 the equipment is not the lowest emissions-
23 releasing equipment available. Why would the City
24 of Tracy want GWF in our community if they're not
25 going to be the best neighbor they can be? No one

1 wants to just settle and no one wants second-best,
2 and especially the residents of Tracy. I've lived
3 here a long time and I know that to be a fact.

4 Our air quality is rated severe, yet
5 nowhere in the AFC was there any mention of
6 violations by the Biomass plant or any mention of
7 the headlines that read, less than a month ago,
8 that Owens-Brockway Glass Container is the
9 greatest gross polluter within our county.

10 In my grandson's kindergarten class of
11 18 in this town, over half of the class was
12 asthmatic. I personally have had friends that
13 have had newborn babies in the last three years
14 born with asthma. You might consider asking how
15 could this be.

16 Our air quality is severe, and not just
17 for our children but for adults such as myself, my
18 husband, Mrs. Sarvey. Those are all examples of
19 asthmatics that live in this community. Our local
20 allergy specialist, Dr. Fernandez, has stated
21 several times that air pollutants are a danger to
22 our children and to our health.

23 Using offsets for pollution credits
24 from outside our county does not do the job here
25 that needs to be done to remove PM10 and PM2.5 and

1 ozone that we breathe daily. We need to be
2 diligent about monitoring the existing plants and
3 making sure that they follow the laws that seem to
4 be amiss on a regular basis, and not adding GWF to
5 the mix with 2.5 levels by their own admissions of
6 96 percent. Having a private third-party company
7 monitoring and calibrating the opacity monitor
8 would allow our city to at least know that we
9 could have some peace of mind that GWF was
10 following the rules.

11 As an intervenor in this process I've
12 watched an unfamiliar and unfriendly process turn
13 even uglier as the hearings progressed. Staff and
14 GWF were glued at the hip. One could not tell who
15 was defending whom. I'm very saddened to think
16 that important evidence was not presented and
17 important testimony was never heard. There were
18 experts and witnesses that came in play in the
19 last three weeks that were not seen or heard
20 because of restraints placed by GWF and staff.
21 They both had worked on this project for months
22 before the intervenors had a chance to see it.

23 This project came out of nowhere, and
24 for the last three and a half months has consumed
25 the lives of responsible citizens of the City of

1 Tracy. I've lived here for almost 20 years, and
2 very few problems have risen to the top of the
3 list as fast as this has. The relentless hours
4 that this project has taken away from those who
5 have few hours to spend with their families in the
6 evening has been astounding.

7 We have a united group that wants GWF
8 to just go away and withdraw their application. I
9 know that's easier said than done. We have moms
10 that have put their babies in strollers that have
11 walked neighborhood after neighborhood delivering
12 flyers, dads that have become caregivers to their
13 children in the evenings and weekends so that
14 their wives could go out and collect petitions
15 signatures, part of that 1100 signatures that
16 you've seen. These dads gave up their Superbowl
17 Sundays to watch their children. They need to be
18 commended.

19 We've had research teams of moms spend
20 hours on the phone developing phone trees, endless
21 hours at the library, archives of the newspaper,
22 the history museum, making copies and surfing the
23 Internet to look anywhere and everywhere that we
24 thought we might be able to find information that
25 would help us stop this peaker plant.

1 We've discovered commingling and
2 convoluted files. Many of those that have worked
3 on this project were misinformed from the very
4 beginning of the project, and I believe the County
5 of San Joaquin was one of those. Lot line
6 adjustments that were completed in January of
7 2002, I think there's something wrong with that
8 picture. Who knows the correct address on this
9 property? I don't know. I don't know if it's
10 parcel one, two or three, or none of the above at
11 this point.

12 As an intervenor, many of us have spent
13 hours, or hundreds of dollars up to thousands of
14 dollars to buy information and representation and
15 research on this project. We have put our money
16 where our mouth is to protect our community where
17 our children and grandchildren are being raised
18 and play every day. Many of us have partaken in
19 endless hours of the CEC hearings along with the
20 task mitigation force that was formed.

21 I have watched high-dollar attorneys
22 shake their heads in amazement at the process. I
23 have watched each of them as a light bulb has
24 turned on and they realize this is not a court of
25 law, but this is a Commission. As their clients

1 seem to be getting deeper and deeper, who knows
2 what the answer will be. Only the Commission
3 knows that.

4 From one of these same attorneys who
5 took upon himself to be disrespectful to one of
6 our citizens in the hallways of the Holiday Inn,
7 he took it upon himself to get his two cents worth
8 by yelling at one of our citizens at the top of
9 his lungs. I don't know if that made him a better
10 man or not, but I think not.

11 GWF has cost the citizens of Tracy an
12 insurmountable amount of money and time, and the
13 plant isn't even here yet. Is this a good
14 neighbor? My feeling is this is not. The CEC
15 presented this project to the County as being on
16 an expedited calendar, and then the Commission
17 decided it needed not to be that. Why is the
18 project on a 12-month schedule when the hearing
19 process still remains on the expedited calendar?
20 I've never had that question answered.

21 For years now, Tracy and San Joaquin
22 County have worked on specific plans, general
23 plans, and the UMP for the City of Tracy which
24 includes the sphere of influence which is in the
25 County of San Joaquin. The land use element

1 focuses on growth around the existing city. And
2 it's always been known to us that there would be
3 six new urban centers, Tracy Hills being the
4 newest of those centers to be added to our list of
5 annexations.

6 There have been projects in the recent
7 years that have come to the City for annexation
8 but have ended in litigation because of a lack of
9 water. And water will be the next on our list,
10 I'm sure. In other instances the County and the
11 City have worked together to make annexation of
12 their properties happen and LAFCO has approved
13 them. It is not uncommon for both of these
14 entities to have to work together.

15 Through the years, though, it's been
16 known and public knowledge that the City and the
17 County have been at odds about various issues, but
18 I've never seen them both be so adamantly opposed
19 to a project. The County, the City, Tracy Unified
20 School District, the intervenors, and the citizens
21 all stand as a united front against the project.
22 Being placed here in a residential neighborhood of
23 the future for us is not acceptable.

24 Would the County planners have given
25 the same response to the CEC staff data worksheet

1 if this project had been placed on the Board of
2 Supervisors agenda at the beginning? Had time not
3 been of an expedited nature, would the CEC and the
4 County have even discussed who would have been
5 responsible to inform the City of Tracy about this
6 project? We don't have those answers, but I
7 sincerely believe that the process was flawed from
8 the very beginning.

9 Now it's left up to you as
10 Commissioners to take the information you received
11 and make the right answer come out of that. My
12 only hope is that you will place yourselves in our
13 town and walk in our shoes on a Save the Air day
14 when you can't breathe, and come up with the
15 proper answer, not to permit the GWF peaker plant.
16 Thank you.

17 PRESIDING COMMISSIONER PERNELL: Thank
18 you. At this time we're going to take a break
19 before we continue, and we'll come back in 20
20 minutes and we will continue with the intervenors'
21 closing arguments, then we'll have the public, and
22 the public will be allowed three minutes for their
23 comments.

24 Thank you.

25 (Thereupon, a recess was

1 held off the record.)

2 PRESIDING COMMISSIONER PERNELL: Okay.

3 Before I turn it over to our hearing officer, I
4 would like to apologize for Commissioner Laurie.
5 He has food poisoning, he thinks, and I'm now on
6 pain pills, so this has been an experience for us
7 Commissioners, I guess. But he did want me to
8 apologize for having to leave early, and as long
9 as my Adviser agrees to drive back to Sacramento,
10 I think I can stay.

11 And, with that, I'd like to turn it
12 back over to our hearing officer, Ms. Tompkins.

13 HEARING OFFICER TOMPKIN: Thank you,
14 Commissioner Pernell. I believe we were in the
15 process of having closing arguments by
16 intervenors, and I see Mr. Sarvey. Did you wish
17 to make your closing at this time?

18 INTERVENOR SARVEY: Yes. I prepared
19 some visual aides for my closing argument and I'd
20 like your permission to hand them out.

21 HEARING OFFICER TOMPKIN: All right.
22 You may proceed.

23 INTERVENOR SARVEY: Thank you.

24 CLOSING ARGUMENT ON BEHALF OF INTERVENOR SARVEY

25 INTERVENOR SARVEY: Well, first of all,

1 I'd like to thank Mr. Pernell for bringing these
2 hearings to Tracy. He doesn't know how much that
3 meant to me, how much it meant to the people of
4 Tracy, and from my heart I want to thank you,
5 Mr. Pernell.

6 Mr. Laurie, you're not here, but I want
7 to thank you for your patience with me.

8 (Laughter.)

9 PRESIDING COMMISSIONER PERNELL: I will
10 relay that to him.

11 INTERVENOR SARVEY: Okay.

12 (Laughter.)

13 INTERVENOR SARVEY: Staff, you've done
14 a great job in educating me on this process. I
15 appreciate everything you've done. And,
16 Mr. Grattan, those wonderful comments I won't
17 forget. Mr. Wheeler, Riley Jones, Mark Kehoe,
18 thank you very much. I hope I didn't leave
19 anybody out.

20 The first page of my visual aide here
21 is my top ten reasons to oppose the Tracy peaker
22 plant. It's kind of like a David-Letterman-type
23 thing, you know.

24 The first reason is my wife says I'll
25 take the trash out now -- No --

1 (Laughter.)

2 INTERVENOR SARVEY: -- health effects
3 on the children, and that's the whole reason I got
4 involved in this, and I've got three kids who I
5 provided a picture of before. And I call this the
6 seven faces of asthma. This is my three children
7 and the next-door neighbor's. And what I want to
8 say is 96 percent of particulate matter emissions
9 from the Tracy peaker project are in the form of
10 PM2.5, particulate matter of 2.5 microns diameter
11 or less.

12 No study can examine the health effects
13 of these fine particles because they lodge in the
14 lungs and never come out. Therefore, 24-hour and
15 ambient air quality standards are meaningless as
16 fine particles act like radiation, with a
17 cumulative dose effect on the lungs.

18 One out of three children in the San
19 Joaquin Valley have asthma. And the children in
20 this picture all have asthma, and their healthcare
21 and medicine costs thousands of dollars each year.
22 The back three children are my kids: Bobby, 7;
23 Caitlin, 11; Kelly, 10. And they all have severe
24 asthma and visit the emergency room, regularly.
25 All seven live within one mile of the Tracy

1 Biomass and Owens-Brockway plants.

2 The next two pictures were part of my
3 conditions of participation for my children. They
4 had to have their two pictures in this book, so I
5 wanted to present those to you.

6 And the first thing I wanted to talk
7 about was local air quality and ambient air
8 quality. The PM10 -- The applicant has a real
9 hard time demonstrating that he's not violating
10 the federal ambient air quality standards for PM10
11 because PM10 background is 150 micrograms per
12 cubic meter, which is the threshold of the federal
13 standard. Any contribution of PM10 or PM2.5 in this
14 area will result in a violation of the federal
15 ambient air quality standard, as demonstrated in
16 Table 8.1-19.

17 Also, in the course of this hearing I
18 found out a lot about the pollution that's already
19 around the area that I live in. Some of these
20 things were quite alarming to me, but one of the
21 things that I found out was that the background
22 includes large amounts of pollution and, in
23 particular, there's 701 tons of NOX coming out of
24 one particular facility, which to me is pretty
25 extreme, although I've heard they've dampered some

1 of that some and I'm glad to hear that.

2 The next page is a picture of our
3 little demonstration at the Biomass plant and an
4 emission summary, of all the emissions coming from
5 that one little half-mile area where the GWF plant
6 is going to be located. You'll notice that the
7 NOX, if GWF is allowed to come, will be over two
8 million pounds a year. That's right in that one
9 little spot. The PM10, 491,880 pounds per year;
10 the ammonia, 163,940 pounds per year; and
11 hydrochloric acid, 53,525 pounds a year. That's
12 quite a background, in my opinion.

13 On the next page I have my famous
14 required emission reduction credits that I've
15 subjected Mr. Grattan to several times, and I
16 apologize, sir. And I want to point out on the
17 next page that it's not just the citizens, it's
18 not just the counsels and everything, the
19 newspaper editors are not behind this project
20 also.

21 And everybody can argue about local air
22 quality and how this plant is going to affect it,
23 and I apologize to Mr. Wheeler but once again I
24 must point out that even he realizes that local
25 air quality will be affected by this plant, and he

1 says so in his Tracy Press article and also in the
2 informational hearing and site visit before the
3 California Energy Commission. He's a very honest
4 man.

5 And I also want to point out that my
6 only concern isn't with GWF, we've got three
7 plants in this area that I'm worried about. Had
8 it been just GWF I might have a different
9 perspective, but with all these plants together
10 and what I've found out about the existing
11 background in that little half-mile area I
12 referred to before, I'm very concerned about the
13 addition of these three plants.

14 And I also want to point out on the
15 next page, these are East Altamont's energy
16 emission reduction credits, and they're totally on
17 the other side of the Bay Area. And it just --
18 it's kind of a pattern that people are locating
19 here, polluting in this small area, this valley
20 that has a lid on it, but their emission reduction
21 credits are not close to the site.

22 And then we have a lot of analysis
23 about cumulative impacts, but I really didn't see
24 any cumulative impact study that really covered
25 what was going on here. The first one here is

1 from the Tesla power project, and unfortunately
2 when they entered stack parameters for East
3 Altamont they made some very large mistakes, so
4 the Tesla power project cumulative impact analysis
5 is definitely erroneous, in my opinion.

6 The next cumulative impact study was
7 the Owens-Brockway/Tracy Biomass plant, Tracy
8 Hills, South Schulte, Tracy peaker, Tesla power
9 plant, East Altamont, and it was a cumulative
10 analysis of all of these emissions combined. And
11 the reason I can't accept this and it seems pretty
12 erroneous is the model concentration of all these
13 facilities combined is 140.21 micrograms per cubic
14 meter, but in the GWF Tracy peaker plant AFC, the
15 NOX emissions from the peaker plant alone are
16 listed as 212 micrograms per cubic meter. I have
17 a hard time accepting that cumulative analysis.

18 The last cumulative analysis that was
19 done on this project compared the Tracy peaker
20 plant's emissions to the entire county. An
21 appropriate cumulative analysis would have
22 compared Tracy peaker's emissions to a six- or
23 ten-mile radius. So, in my opinion, this
24 particular analysis did not cover the right area.

25 Also, I'm extremely concerned about the

1 construction mitigation that's being proposed
2 here. Construction emissions are going to impact
3 PM10 levels to 354 percent of the state ambient
4 air quality standard, and the emissions offset
5 which they're asking for is partially going to be
6 offset by operational emissions that they're going
7 to surrender before they start construction. And
8 I don't feel that -- operational emissions cannot
9 offset the construction emissions which are going
10 to be completely localized in that area. And the
11 operational emissions themselves are coming from
12 Stockton, as far as I know.

13 The next handout, that's the famous
14 white-tailed kites flying over the lay down area,
15 and I only regret that we didn't get to see
16 Mr. Smallwood testify and get to see his video of
17 these beautiful birds. And I want to mention that
18 I went with him on this site visit, and in the
19 short ten minutes we were there initially we saw
20 northern harriers and shrikes in the same visit.

21 The next issue is the visual aspects of
22 this plant, and from the Visual Resources figure
23 2(b), cop one, the screening that's going to be
24 provided by these very small trees will in no way
25 screen this plant from residents, from anyone, and

1 I'm very concerned also that on the other side of
2 this plant, the canal side, there is no screening
3 at all for Tracy Hills residents, people who
4 travel on 580, people who use the recreational
5 trails of the Delta-Mendota canal and the
6 California aqueduct. And I feel that there needs
7 to be a rework of this screening if this plant
8 comes in.

9 Under my energy alternatives, I threw
10 my little plug in there, and it's actually for the
11 CEC. I want to thank the CEC for the money that
12 they contributed to my photovoltaic system, and I
13 want to encourage everybody in the room to look
14 into the renewable energy emerging resources --
15 Cheri, do you want to help me out with that, I can
16 never say that -- but the CEC has got a lot of
17 money for anybody who wants to put in some
18 photovoltaic panels, and it's a great thing to do.

19 In any event, it's the greatest program
20 in the nation and everybody should take advantage
21 of it, and don't forget about the retrofit
22 programs they have too, they're outstanding.

23 And then I wanted to comment on the
24 assertion that the Well Head application had
25 somehow paved the way for GWF peaker plant, and

1 under General Considerations from the Well Head
2 application you see the first three things. The
3 first question is does it appear that any
4 environmental features of this project will
5 generate significant public concern or
6 controversy. Well, that was answered no and we
7 all know the answer to that question about peaker
8 plants around here.

9 Will the project require approval or
10 permits by agencies other than the County, and it
11 checks it no. We know the San Joaquin Valley Air
12 Pollution Control District had to weigh in on that
13 somewhere. And then is the project within
14 Tracy's, or not Tracy's, but any city's sphere of
15 influence or within two miles of any city, and it
16 was checked no. So obviously they've got to go
17 back to the drawing board on that analysis.

18 And then the next document is from
19 Public Health Services to the CEC about the Well
20 Head application, and if you had a chance to see
21 that Well Head file, you'll see that GWF and Well
22 Head all got lumped into the same file, and there
23 was a lot of confusion in the County Department,
24 and this is just one aspect, even the Public
25 Health Services was confused.

1 On the next page, there is a map there
2 that I got from the recorder's office when I went
3 to inquire about the Well Head application and its
4 site address, 26088 South Lammers Road. As of
5 2/7/02, this address didn't exist in the County
6 recorder's office, so I can see some confusion
7 going on there definitely.

8 The next map is the GWF parcel number
9 listed in the AFC is 209240-11. I went to the
10 County recorder's office on 3/11/02 and they
11 never, they didn't have that one recorded either.
12 So there's a lot of confusion going on there.

13 This next one is a series of faxes that
14 I was trying to introduce as evidence. The first
15 one is from Mike Hakeem to Mike McGrew of the
16 County, and he supplies the draft findings of
17 compatibility for the TPP to the County, and I
18 just want to emphasize that these are not the
19 County's findings, these are this particular
20 attorney's findings or GWF's findings or whoever
21 you want to assign them to, but they're not the
22 County's.

23 Then on September 10th the same law
24 firm -- Hakeem, Ellis and Marenco -- sends the
25 final findings to the County, including the

1 American Farmland Trust mitigation agreement. So
2 Mike Hakeem sent the County these findings. These
3 are not the findings of the County, and I want to
4 make sure everybody knows that.

5 Finally, Mike Hakeem modifies the
6 language of the final findings to the Department
7 of Conservation. And then in the next fax
8 Chandler Martin sends these alleged County
9 findings to the Department of Conservation when,
10 in fact, we know that they weren't the County's
11 findings.

12 The Department of Conservation accepts
13 the County's findings and says it's up to the
14 County to decide whether this thing is
15 appropriately located under the Williamson Act.
16 And then in the next handout I have there in the
17 binder, this is a conversation of Steven Oliva of
18 the Department of Conservation, and he agrees with
19 whose findings? Once again, they're not the
20 County's findings.

21 Finally, on September 26th, Mr. Hakeem
22 sends a letter to Ms. Sullivan, providing a letter
23 for Ben Hulse to send to the American Farmland
24 Trust, and actually here he's actually providing a
25 letter, not just findings, he's providing the

1 whole letter to send.

2 And then one day after September 11th,
3 we all know what happened on September 11th,
4 Eileen Allen of the CEC sends a request for agency
5 participation, which had been sent before, but the
6 outline of this particular request is that the
7 governor's executive order requires the County to
8 respond within 30 to 65 days of this application
9 being deemed data adequate.

10 Well, before the staff assessment has
11 even been issued and before they even know this
12 project doesn't qualify for four-month review, the
13 County has already issued the so-called findings.
14 So how can the County issue a determination when
15 even the CEC staff has not fully analyzed the
16 Tracy peaker plant?

17 On the same day, September 12th,
18 Ms. Allen asked for the County's, or Mr. Hakeem's
19 findings on LORS compliance, and that's long
20 before the AFC is data adequate. Then on the next
21 page we have the first draft of Mr. Hulse's
22 letter, and it's signed by Chandler Martin. The
23 page after that we have the redraft of that
24 letter, and then we have a rejected draft on
25 September 13th. So as you can see, this request

1 was made on September 12th but the letter was
2 already being drafted on September 13th.

3 Then on September 18th the letter was
4 finally issued, but the County Board of
5 Supervisors was not informed of the decision.
6 There are no cc's at the bottom of the letter,
7 there is no -- no one informs the County what's
8 going on. So GWF does a presentation, and on the
9 next page Mr. Marengo puts a letter out and he
10 opposes GWF unequivocally. He says, "Please do
11 not add projects to further impact this
12 pollution," referring to our county.

13 Then on being informed of the
14 Development Department's decision -- I'll take
15 credit for that -- the Board of Supervisors
16 unanimously opposes GWF. Then we have a
17 communication on 12/21/01 between Eileen Allen and
18 Kerry Sullivan where the CEC and the County
19 actually agree on LORS violations that exist in
20 this project. One is that the power source is not
21 required to be located on ag land, and two is the
22 Biomass should be sited or the GWF should be sited
23 where the Biomass plant is to satisfy the LORS
24 CODPP 25.

25 And then I have a little rundown of the

1 staff assessments next to it on how they rectify
2 this, and I don't see how they ever rectified the
3 fact that the staff and the County both agreed,
4 the CEC staff and the County staff both agreed
5 that these LORS were being violated, but I see no
6 reconciliation of that fact.

7 Then on the next page we've got the
8 findings from the County file, which are being
9 disputed, but in any event I pulled this from the
10 County's file on 3/12/02. It was signed by Larry
11 Matthews, and it's the County's finding that this
12 finding can be made because the power plant is not
13 temporary, so we got a lot more confusion going on
14 there.

15 The final fax here is a fax from
16 Mr. Hakeem to Kerry Sullivan, and he tells Kerry
17 Sullivan that the staff has recognized these LORS
18 violations and defines the language under which
19 it's been done.

20 And then we have our public safety and
21 fire hazard that I don't feel has been addressed.
22 We've talked about money that should go to the
23 Tracy Fire Department because the station that
24 would respond to this facility fire only has two
25 people in it most of the time, so I think there

1 needs to be something in the conditions or
2 something to provide the money for the City of
3 Tracy to respond to any type of fire that could
4 occur at this plant. And, in fact, on the tour of
5 the Hanford plant by the citizens of Tracy, the
6 first thing they smelled when they got off the bus
7 was natural gas.

8 HEARING OFFICER TOMPKIN: Three
9 minutes, Mr. Sarvey.

10 INTERVENOR SARVEY: Thank you. I'm
11 almost done.

12 On the next page, I outlined the
13 Biomass fire, which we all know about. It took 17
14 districts and three days to put out, and, in fact,
15 they ran out of water while they were fighting
16 this fire and they couldn't get any more people to
17 help because they had everybody from three
18 counties helping and there was nobody left to
19 help.

20 And finally, I've got, again, the
21 resolution opposing the peaker plant by the City
22 of Tracy. The next page is the resolution by the
23 San Joaquin County Board of Supervisors opposing
24 it, and then finally, Governor Davis himself
25 opposes this -- not the plant itself, but he does

1 oppose the plant's master power purchase agreement
2 and sale because it's part of one of those \$43
3 billion that he's trying to renegotiate. And I
4 put a couple of facts in there about it.

5 And, of course, on the last page, we've
6 always got to go to the bottom line. The bottom
7 line is if this plant is approved with these terms
8 and conditions in the master power purchase and
9 sale agreement, we'll all see it on that little
10 energy surcharge line on the bottom of our PG&E
11 bill. Thank you very much.

12 PRESIDING COMMISSIONER PERNELL: Thank
13 you, Mr. Sarvey.

14 (Applause.)

15 HEARING OFFICER TOMPKIN: I believe
16 that's every intervenor; is that correct? Did I
17 miss anyone?

18 All right. Then before we move on to
19 public comment, let me briefly address the
20 briefing schedule.

21 DISCUSSION OF BRIEFS

22 HEARING OFFICER TOMPKIN: As we
23 indicated earlier, we are going to give the
24 parties an opportunity to file briefs. They will
25 be due two weeks from today by 4:00 p.m., and that

1 date would be April 11th. It will be a 15-page
2 maximum per party. I understand that some
3 intervenors are interested in possibly
4 consolidating briefs. We would encourage that.

5 If at least three intervenors do join
6 together to issue a brief, we would give up to a
7 30-page maximum, but there should be at least
8 three intervenors so that -- we're trying to
9 reduce the amount of paper.

10 In terms of what the --

11 UNIDENTIFIED SPEAKER: If it's two
12 intervenors?

13 HEARING OFFICER TOMPKIN: Well, it
14 would be -- two intervenors I'd say 20 pages.

15 In terms of what the committee is
16 interested in the parties briefing, we're really
17 looking for legal authority, case citations,
18 statute, that type of analysis on a couple of
19 issues, one being, as Commissioner Laurie
20 indicated, the relevance of the LORS to the City
21 of Tracy.

22 And then the other one relates to the
23 County standards, and I'll just read you the issue
24 as we have it formulated here: In order to find
25 LORS compliance and that the Tracy peaker project

1 was a permitted use, did the CEC, as the lead
2 agency, have to make all of the findings and
3 subfindings the County of San Joaquin would have
4 made had it been the lead agency on the project.

5 So we're very interested in a legal
6 analysis, again supported by case authority,
7 statutory authority, those issues. And if there
8 is something else of particular interest to the
9 parties for which you have legal authority, we'd
10 entertain that as well. But, again, you would
11 have to be within that 15-page maximum.

12 Are there any questions from the
13 parties at this time?

14 STAFF COUNSEL WILLIS: Yes. Will you
15 be issuing this in writing as well, or is this --

16 HEARING OFFICER TOMPKIN: Well, I was
17 just planning to state it orally. I guess we
18 could, if there is a specific request, I guess we
19 could put it in an order, although orally would be
20 fine.

21 INTERVENOR SARVEY: I'd like it in
22 writing, please.

23 (Laughter.)

24 HEARING OFFICER TOMPKIN: Okay. That
25 will not extend your time, understand.

1 (Laughter.)

2 UNIDENTIFIED SPEAKER: But we'll
3 understand what we're supposed to do.

4 HEARING OFFICER TOMPKIN: Okay. So I
5 will include that in the revised schedule and
6 we'll issue that. We'll kind of give a time frame
7 in terms of when we might expect the proposed
8 decision. Again, that might be contingent upon
9 receipt of the transcripts, so it may vary
10 somewhat. It would be a tentative date.

11 Okay. Before we proceed with public
12 comment, the applicant has requested an
13 opportunity to make a brief statement.

14 Mr. Grattan, you may make that
15 statement at this time.

16 APPLICANT COUNSEL GRATTAN: Yes.
17 Mr. Doug Wheeler.

18 INTERVENOR SELIGMAN: Is it part of a
19 closing -- I don't want to be , but is it a
20 closing statement or argument --

21 HEARING OFFICER TOMPKIN: It's not a
22 closing statement, it's --

23 INTERVENOR SELIGMAN: -- or is it a
24 public comment?

25 HEARING OFFICER TOMPKIN: -- it's in

1 the nature of public comment, but from the
2 applicant.

3 CLOSING STATEMENT ON BEHALF OF THE APPLICANT

4 MR. WHEELER: Doug Wheeler for GWF.

5 What I'd like to do is, I think it was indicated
6 earlier in the proceeding, there was an
7 unfortunate incident last week regarding the
8 premature delivery of some of the equipment for
9 the proposed project.

10 I think, as everyone is aware, GWF had
11 entered into a contract with the California
12 Department of Water Resources. The commercial
13 operating dates in that contract required that all
14 of the equipment for the project be purchased
15 prior to any consideration by the Commission on
16 the license. In fact, the gas turbines were
17 actually purchased prior to the submission of the
18 application to the Energy Commission.

19 As this proceeding continued, and it
20 was apparent that the schedule was going to slip,
21 GWF in late February leased warehouse space at the
22 Port of Stockton, along with railroad siting
23 space. All of the equipment that's been delivered
24 has gone to the Port of Stockton. The delivery of
25 the gas turbines to the City of Tracy, to the

1 railroad siting adjacent to the Owens-Brockway
2 facility was a mistake. It's GWF's responsibility
3 for those deliveries, and we have to take
4 responsibility for it.

5 When we found that they had been
6 mistakenly delivered, we made every effort working
7 with the railroad to remove the turbines and get
8 them back to where they were supposed to have
9 gone, which again is the Port of Stockton. Again,
10 it was an unfortunate error, mistake, it's our
11 responsibility, and we'd like to apologize to the
12 community for the error.

13 A couple of other comments, just real
14 briefly. I think, as Mr. Grattan has indicated in
15 his closing, the public participation and the GBS
16 response to the data request, if this project is
17 allowed to be built, we'll make it a better
18 project. I'd like to thank the community for the
19 participation in the process. I think it's
20 obviously been a very long process and I think to
21 some extent it was a foreign process to a lot of
22 the community who was involved in it.

23 The other thing that I would like to
24 say is that as a result of the community's input,
25 GWF has undertaken to have a separate dialogue

1 with the community through what has been described
2 as the community task force. There have been
3 three meetings of that task force, and through
4 that process we have identified a number of
5 different things that we believe, GWF believes
6 that if adopted by the task force would produce
7 direct air quality benefits.

8 I should say that the issues that we've
9 been primarily talking about are air-quality
10 related. But specifically, I would like to tell
11 you what GWF has committed to do as part of the
12 task force. The task force hasn't accepted this,
13 and let me just say that this is what GWF is
14 committed to do.

15 Those commitments involve cleaning up
16 the diesel engine equipment that's used in the
17 operation of the Tracy Biomass plant. It involves
18 cleaning up 29 school buses that are diesel-
19 engine-driven that are operated by the Tracy
20 Unified School District. We've identified three
21 school districts in the County of San Joaquin --
22 the Jefferson School District, Lammersville School
23 District, and the new Jerusalem School District.
24 Together there are eight buses operated by those
25 three school districts. We have committed to

1 clean up those buses as well.

2 In addition to that, we have committed
3 to working with the task force on a lawnmower
4 exchange recycle program that would be conducted
5 here in the City of Tracy.

6 There were issues raised regarding PM10
7 monitors, or a monitor closer to the City of
8 Tracy. We have committed to upgrading the
9 Patterson Pass monitoring station with a PM10
10 monitor. We have committed to additional
11 landscaping to mitigate potential visual impacts
12 from property owners to the south of the project.

13 The point of making these specific
14 comments is I wanted the community, who has not
15 participated in that task force, and this
16 committee to know that GWF is committed to
17 addressing the issues that have been raised by the
18 community.

19 And just one last point, and I think
20 Mr. Sarvey alluded to the emission reduction
21 credits that were part of the original
22 application. As a result of his comments and
23 others regarding the fact that the emission
24 reduction credits were being provided from Kern
25 County, we've addressed that issue and we have

1 made a significant effort to acquire and we have
2 acquired local emission reduction credits. So the
3 mitigation package will be modified to include
4 those.

5 Final point is the -- while we felt
6 that the emission reduction credit mitigation
7 package that was included as part of the
8 application, and then modified or will be modified
9 as a result of these recent acquisitions, from a
10 regulatory perspective addressed the -- mitigated
11 the air quality impacts on a regional basis.

12 Setting that aside, we understood and
13 we recognized that there were real concerns
14 regarding air quality and public health impacts
15 that the community was expressing, and when I say
16 the community I'm talking about both the residents
17 of the City of Tracy, but equally as important are
18 those residents who reside outside the City in the
19 County of San Joaquin.

20 We took those comments to heart, and we
21 feel that that's what we've attempted to address
22 through this task force effort. And as soon as
23 the efforts of that task force are concluded, we
24 will submit a copy of that agreement as part of
25 the condition that we offered during the last

1 evidentiary hearing, that being the submission of
2 a plan to deal with local community benefits.

3 Again, I want to thank the Commission,
4 the siting committee, the staff, and the community
5 for their participation in this process. Thank
6 you very much.

7 PRESIDING COMMISSIONER PERNELL: Thank
8 you, Mr. Wheeler.

9 HEARING OFFICER TOMPKIN: All right.
10 At this time, then, we will proceed to public
11 comment. The first speaker will be Susan Sarvey.
12 And again, I remind the public that each speaker
13 is limited to three minutes.

14 INTERVENOR SELIGMAN: Objection; it was
15 my understanding that Mr. Wheeler was part of the
16 public comment.

17 HEARING OFFICER TOMPKIN: He was.

18 INTERVENOR SELIGMAN: He spent much
19 more than three minutes, and I think that that
20 should be reconsidered by you as to providing the
21 same type of benefit to the public that wants to
22 speak that you gave to Mr. Wheeler.

23 SPEAKER SARVEY: I'll try not to be too
24 long.

25 PRESIDING COMMISSIONER PERNELL: This

1 committee will give latitude, as we always have,
2 to the public. Point well taken.

3 HEARING OFFICER TOMPKIN: And we would
4 request that you attempt to limit your comments,
5 but you will have some latitude.

6 SPEAKER SARVEY: Hi. I'm Susan Sarvey.
7 I want to thank you so much for coming to the City
8 of Tracy. That was very gracious and I know that
9 was a hardship on you, and I appreciate you doing
10 that. It helped us greatly or we absolutely could
11 not have participated. When we first started
12 coming to the meetings, Mr. Pernell, you know our
13 community was very concerned that this was a done
14 deal, so it was really gracious of you to come
15 here so we could participate.

16 I was really -- After you tried to
17 explain things to me, I was really hopeful about
18 what this process was going to be about, and I'd
19 like to share with you what some of my
20 disappointments about this process are.

21 I really felt that this process was
22 about discovery, discussion and open dialogue of
23 what was found out. I was really disturbed that
24 there are all these attorneys in this room, and I
25 think I might be the only person who took the time

1 to go get the County file. If you are
2 representing somebody on a land use issue, on any
3 kind of issues, the first thing you should be
4 responsible for doing is either you or your
5 paralegal going and getting the original document.
6 You should have known everything that he
7 presented.

8 I was really unhappy at the number of
9 times that I heard suppress that, I'm an expert, I
10 oversaw the project, I can't comment on this, I
11 didn't prepare the thing. I thought we were here
12 to discuss the issues. If you were the overseer
13 and you're not the expert, send the guy in who
14 prepared the report and can answer the question.

15 If we really wanted to have a good
16 process and we really wanted to know the real
17 answers to make the community feel better, all of
18 the evidence would have been presented, everything
19 would have been discussed, and there would have
20 been no need to suppress. Because if you were in
21 the right, we're all educated people here. We're
22 all reasonable. We should have been able to have
23 a dialogue and come to an agreement. And if
24 unfortunately you're wrong or unfortunately I'm
25 wrong, I have to accept that. But there should

1 have been an open dialogue on these issues.

2 It was really disappointing to me to
3 hear over and over again I suppress that, I'm an
4 expert, I oversaw it, I don't know, I can't
5 comment on that. That didn't help you, that
6 didn't help me, and I don't know how anybody is
7 supposed to feel better about that this whole
8 project was adequately and completely discussed.
9 Because throughout the transcripts you hear this
10 over and over again: No, we can't talk about
11 that; no, we're not going to look about that, or I
12 can't answer that question. But you never asked
13 them, Mr. Commissioner, can you send the guy in
14 who can answer that question. Let's talk about
15 that, let's find out the answer to that question.

16 I understand that we're no longer on
17 the expedited review schedule, but it really felt
18 to me like we were on the expedited review
19 schedule. And one of the things that we
20 discovered, whether it was given as true evidence
21 or it's just whatever you guys call it, there was
22 a lot of problems with the making of this case,
23 with the file at the County level, at the City
24 level, with the staff assessment. There was
25 confusion, there were problems. This was just on

1 the paperwork end of it.

2 These people have a Department of Water
3 Resources contract, they need to get this plant up
4 and running. If they build in an expedited
5 manner, can you imagine the mistakes and the
6 potential for public safety and public problems?
7 I will hate to see what kind of accident can
8 happen because we're rushing. Because look at the
9 kind of accidents that happened in this room
10 throughout the process -- not to mention food
11 poisoning.

12 So I'm really concerned about that --

13 PRESIDING COMMISSIONER PERNELL: I'm
14 not sure he got that from the City of Tracy.

15 (Laughter.)

16 PRESIDING COMMISSIONER PERNELL: I
17 wouldn't want that on the record.

18 SPEAKER SARVEY: Well, that makes me
19 feel a lot better. I'm really glad to hear that.

20 So I'd really like to thank you for
21 giving us a chance to participate, but I really
22 hope that you will listen and examine everything
23 that we've talked to you about. And I would
24 really hope that you would, in whatever your final
25 comments are, Commissioner Pernell, that you tell

1 every suit sitting in this room, you ever come
2 talk to me about a power plant again, don't expect
3 to say to me, I oversaw the project, I don't know
4 what I'm talking about.

5 Don't say I suppress, I don't want to
6 talk about that. If you're going to come and talk
7 in front of me, you are going to be an adult, you
8 are going to be an expert, and you are going to be
9 ready to protect and defend your turf. Because I
10 want to know the whole story. And that's what was
11 really disappointing to me here, is there's a lot
12 of educated people in this room and I didn't hear
13 the dialogue that showed that education, and that
14 really was a sad thing for me to see.

15 So I hope you'll consider everything we
16 said. We worked really hard. I know we gave you
17 a hard time. And I want to thank Doug, because
18 Doug has been on the other side and I haven't been
19 very nice to him most of the time, but he's been
20 very gracious to me, he's been very helpful in
21 trying to make me feel better about things. I'm
22 not saying he can make me feel better, but he
23 tried, and I respect that he at least made that
24 effort.

25 And I really hope that because of what

1 happened in this room on the paperwork level, you
2 will ensure that the workers and the public
3 service people who defend my city and take care of
4 our people will be safe, and that they will not be
5 put at risk from lack of training or people being
6 in a hurry to rush something that does not need to
7 be rushed. Thank you.

8 PRESIDING COMMISSIONER PERNELL: Thank
9 you.

10 HEARING OFFICER TOMPKIN: All right.
11 Our next speaker will be Les Serpa.

12 SPEAKER SERPA: Les Serpa, City of
13 Tracy. I'm glad we get this small moment in here
14 to talk. I'm retired off the City Council here,
15 and at the City Council we take a little bit
16 different tack than what this Commission does.

17 On the City Council, we try to make it
18 fair for everyone, for both sides. And out here
19 (indicating) is the boss, and there's all of our
20 bosses. They elect the governor of the State of
21 California. They elect your boss. And so to us,
22 they come first. We get them up there and we find
23 out what all their complaints are, and then we
24 chase after the answers. And that's the way we do
25 it. And it comes out pretty much fair for

1 everyone that we confront.

2 Now, this company, GWF, in my opinion
3 has kind of a raw deal. And these people out
4 here, they also have a raw deal. And that deal
5 consists of this: GWF is a California company,
6 and they should be given the leeway by the
7 governor to have the time they take to pick a
8 correct location, a good location for their plant,
9 so they won't end up right here today like this.

10 This is needless. If they were given
11 the time to get a good location, they could
12 feel-- if they could come to the City Council and
13 talk to the public there ahead of time and pick
14 them a good spot, we would never have to go
15 through all of this.

16 But being the governor has to get in an
17 all-fired hurry, like those white collars in
18 Florida that had to push that button on that
19 shuttle with the frozen O rings, they had to send
20 it up. And you the engineers have got to tell
21 that governor you've got to slow down and you've
22 got to pick a path and a track that's not going to
23 cause everybody a lot of problems. And he caused
24 Tracy and this County a lot of problems, you know.
25 He caused us a lot of problems.

1 People are down here -- There's a lot
2 of people that would like to come down here that
3 can't get down here, and Sarvey spends a lot of
4 his business time down here. And so the thing of
5 it is, when you hurry like that and try to cheat
6 the clock, you're going to get in an accident. So
7 don't try to cheat the clock. Take the time. If
8 it's a reasonable amount of time, a year, to go
9 through something, or two years, take that time,
10 go through the process and come up with decent
11 answers to all the questions.

12 The birds Sarvey talks about lives in
13 that wild animal preserve out there right next to
14 the plant, that question never was answered. I
15 don't know where the Department of Fish and Game
16 is, you know. But those things need to be
17 answered.

18 And all of the questions that the
19 public has I would say I'd probably -- Pernell,
20 I'd probably give you a C on opportunities for the
21 public to talk, because they were always shoved
22 all the way down to last. And I'm on dialysis, so
23 I had to go to dialysis at 4:00 o'clock in the
24 morning when we were out there at 12:00 o'clock,
25 midnight, and the public still hadn't had a chance

1 to talk.

2 So I would like to see the Commission
3 take a little different tack, if you ever do this
4 again. Get the public up here, get all the
5 questions that they have, and then we'll go
6 searching for the answers. And I think you ought
7 to talk to that governor when you first get back
8 up there to Sacramento, and tell him hey, give GWF
9 time to pick another spot, a better location
10 that's not bucking up against the City. And
11 there's a lot of locations out there.

12 It's a California company. I can't see
13 where a Florida company should get the jump on
14 these guys, you know. I mean, they keep the money
15 in California. Florida does not. So I just hope
16 that you can convince him, you know, and my vote
17 rests on this. You know, if he'll to help these
18 people out, I'll vote for him. But if he's going
19 to leave this thing like this and cause a big
20 problem to the County and the City, then, you
21 know, I'm going to vote for somebody new.

22 But I went and talked to the Board of
23 Supervisors some weeks back, and I told them about
24 some of the implications out there, and they were
25 surprised. They never heard of the Wild Game

1 Refuge, they never heard of a lot of things out
2 there.

3 And my son built Red Bridge, and he's
4 still building Red Bridge. And we were hoping to
5 keep the thing going, we were building communities
6 for people over the Altamont Pass over there,
7 Danville, and those towns. They like a certain
8 type of community, and so that's what we're trying
9 to produce out there in that area, and that plant
10 is right down the barrel of where we're going.

11 You know, so why create another
12 problem? We have the box plant in the wrong
13 place, we have Sulatex, the insulation plant in
14 the wrong place. We have that Brockway-Owens, the
15 glass plant in the wrong place, and we don't want
16 to create more wrong locations for these
17 businesses. We've going to eventually get those
18 straightened out. Thank you.

19 PRESIDING COMMISSIONER PERNELL: Thank
20 you.

21 HEARING OFFICER TOMPKIN: Our next
22 speaker will be Ena Aguirre.

23 SPEAKER AGUIRRE: Good afternoon,
24 Commissioners. Thank you very much for sitting
25 with us through all these hours.

1 My name is Ena Aguirre, and I live at
2 937 West Street, Tracy, California. I was unable
3 to participate because I had a very bad asthma
4 attack on March the 3rd, and I had to go to the
5 emergency for about seven hours. So talking about
6 the power plant and the pollutants that are going
7 to be spewed here become a very personal issue
8 with me.

9 I am one of those people that has adult
10 onset asthma, which means that no one in my family
11 has ever had asthma, and for some reason I seem to
12 have it. So, you know, that is a concern.

13 I would like to talk about how I view
14 this siting process, and I'm hoping that the
15 Energy Commission also has the same kind of view.
16 The siting process for the California Energy
17 Commission should be a zero-sum game. In other
18 words, in terms of pollution, any plant that comes
19 to Tracy should not increase the amount of
20 pollution of any kind, any kind that the Energy
21 Commission gets involved. It has to leave our
22 city and our health and our environment at least
23 the way that they found it, if not better.

24 So this is why I'm interested in taking
25 a look at it as a zero-sum game. I am concerned

1 that the amount of pollutants that the Tracy
2 peaker plant will give us as residents are, in
3 fact, not a zero-sum game, that we will be
4 negatively impacted. If I am wrong in this, you
5 know, we will know in the near future.

6 One of the problems that we have in
7 Tracy is that we do not have any way of measuring
8 what the total pollution is right now. So the
9 documentation that has been used in your process
10 and by a lot of us have been from different
11 sources. And so a lot of us have, you know, want
12 to be sure that eventually we do have a way of
13 measuring the pollutants in the neighborhood so
14 that when you all come up with the Tesla plant
15 which you all are in the process of looking at it
16 or the Altamont that we will have more
17 information.

18 Now, as to my recommendations. I would
19 like to see the Commission, the California Energy
20 Commission to consider requiring that the San
21 Joaquin Valley Air Pollution Control District ask
22 that each of the new plants coming in pool their
23 money so that we can have at least one fully
24 developed air pollution measure and device. I
25 don't know whether this is within your purview, by

1 the way. So that would be the only caveat.
2 Hopefully, that's the kind of thing that you will
3 be able to do.

4 Number two, I believe that the
5 California Energy Commission should consider
6 changing the process so that residents will know
7 the moment that a company comes to you and asks to
8 start meeting with the staff, which normally takes
9 two months, that the City be notified in some way.
10 Because what happens with the process that you're
11 now following, you give the company two to three
12 months' time for them to get to know what the
13 issues are that they have to deal with, while
14 those of us in the City have absolutely no idea
15 what we are going to be hit with, so that we are
16 always working two or three months behind whatever
17 the staff and the company is doing.

18 Number three, I believe, you know, that
19 because of the power that the California Energy
20 Commission has that the California Energy
21 Commission has an obligation to be as pro-resident
22 as they seem to be pro-business. And again, I
23 could be wrong, okay. I could be 100-percent
24 wrong.

25 Number four, because the San Joaquin

1 Valley Air Pollution Control District is the
2 largest in the country, you know, if the
3 California Energy Commission can help us make that
4 air pollution district smaller so it just has at
5 least two counties, like San Joaquin County and
6 Stanislaus County, it might be easier for those of
7 us who are residents to try to get a handle on
8 what's going on with the pollution here in Tracy
9 and with some of the health effects.

10 I am also concerned that even now, you
11 know, I still have a feeling that I don't know how
12 many agencies are really involved in giving
13 certificates or giving letters of recommendation
14 or giving whatever the siting process needs. It
15 looks like there could be as many as 15 other
16 agencies that are really involved in the process,
17 but that again goes to so many of us are new at
18 this, we haven't put in the time. You know,
19 before I had put in some time to try to find out
20 what the Energy Commission is and how they
21 function and stuff like that, but not to the
22 detail that some of us have had to become involved
23 in here.

24 And the last one is that the California
25 Energy Commission consider becoming more resident-

1 friendly by taking the time to see how the
2 residents become involved in the process. Right
3 now we have to call Sacramento and say, hey, we
4 heard that. And it seems to me that there has got
5 to be some other process that somehow gets to the
6 City, but again, I don't know whether the Energy
7 Commission can do that kind of thing or whether it
8 is possible to even change it.

9 Thank you very much for taking the time
10 to listen to me.

11 PRESIDING COMMISSIONER PERNELL: Thank
12 you.

13 HEARING OFFICER TOMPKIN: Andy Bogetti
14 will be our next speaker.

15 SPEAKER BOGETTI: Andy Bogetti. I work
16 in the City of Tracy on West 11th Street and live
17 in Modesto. I wasn't really ready for you.

18 Anyway, the way things are going right
19 now, there's zero options left for everyone, GWF
20 or the community of the Tracy. Your decision is
21 going to be either there's going to be a peaker
22 plant over behind Owens-Brockway or there's not
23 going to be a peaker plant. GWF is going to lose
24 a ton of money or the citizens of Tracy, the Tracy
25 community are going to be very upset.

1 That's the way the process has been
2 going so far. There's no options left right now.
3 It's down to the final two seconds and what's
4 going to happen.

5 Unfortunately -- I've been in the real
6 estate acquisition and land development in this
7 area for at least 15 years, more than that. I was
8 born in the City of Tracy. Anyway, so I know a
9 little bit about what should go where and what
10 shouldn't go where. I was here before anybody had
11 a definition for what UMP meant, which is the
12 urban management plan. I helped with that.

13 I developed 300 acres which consists of
14 1400 homes, a high school site -- well, it's a K
15 through 12; a commercial site, which is actually
16 about a couple miles downwind of the project. I
17 also worked with the Safeway distribution center
18 in going over there. I have nothing, I have no
19 problems, I have absolutely no problems with --
20 Well, another one I worked on was the material
21 recovery facility, which is the garbage transfer
22 station out on McArthur Road south of town in the
23 gravel mining areas.

24 The County garbage dump on Corral
25 Hollow Road, the landfill was about ready to

1 close, and they needed to do something really
2 quick and get this material recovery facility
3 approved. So they tried a few other spots, just
4 like this one here, up on the north side, over on
5 the west side. And then guess what, they call me
6 up and they say we've got a problem, Andy. Where
7 in the hell are we going to put this thing? I
8 said, well, okay, let me look into it. He gave me
9 about two weeks, and I said I found a spot.

10 And it was down there in an abandoned
11 mine, and it's 40 acres. They wanted to put it on
12 ten, which is not enough now -- then and it is not
13 enough now. Found 38 acres, actually, is what it
14 is, and in record time, without any opposition
15 whatsoever -- not one person stood up in the two
16 years of EIRs that we went through the planning
17 stage on that -- and complained, no one. A
18 garbage transfer station, material recovery
19 facility.

20 Now, I worked on that, I worked five
21 years on the 293 acres that I was telling you
22 about, the residential development; the Safeway
23 development. I have no problems with these
24 things. There's no problems with sewer plants. I
25 have no problem with the Safeway distribution

1 center, gravel mines. I don't even problems with
2 prisons, peaker plants or biomass plants. These
3 things aren't a problem for me at all.

4 But what I do have a problem with is
5 when they're located in the wrong spot, and
6 obviously I knew that property was zoned for the
7 future, in the South Schulte specific plan because
8 I worked on it, very low-density residential. It
9 wasn't zoned that, it's pre-zoned that.

10 Anyway, it's very upsetting to me that,
11 you know, I got to know Doug a little bit here. I
12 grew up with a lot of these people in Tracy, even
13 though I live in Modesto. But, you know, it's
14 kind of upsetting for me to see right now that
15 there's no options. Doug is screwed if this thing
16 is a no. The City of Tracy is screwed if it's a
17 yes. There's nowhere else we can go.

18 You're going to be a great guy to some
19 of the people here and you're going to be a you-
20 know-what to the rest. So I want to throw
21 something at you, and I don't know if it's going
22 to stick or not.

23 First of all, right next to the
24 material recovery facility on McArthur Drive on
25 the south side of Tracy there's 53 acres, and it's

1 the location of the 1998 Tracy tire fire. And at
2 that location we had one of the most horrible
3 fires, I mean, there's millions and millions of
4 tires, I'm not sure how many tires burned in that
5 deal. But you know what's amazing, it smoldered
6 for, hell, I think it was two and a half -- 30
7 months, two and a half years, smoldered.

8 You know what? The impacts on the City
9 of Tracy citizens wasn't that bad. It wasn't as
10 bad as it could have been. If that fire would
11 have happened over at the peaker plant site, it
12 would have been hell. Now, what upsets me
13 about -- Well, this is where the peaker needs to
14 be located, on that 53-acre, in that 53-acre hole.
15 It's an abandoned gravel mine.

16 Now, the biomass plant needs to go
17 there too, and it would be -- I don't know, you go
18 by the biomass plant and it kind of looks like an
19 erector set. I mean, it looks like something that
20 can be taken apart and put back together again.
21 Maybe they can sell the property underneath it and
22 make the money back that would cover the cost of
23 relocation.

24 But the biggest problem here is there's
25 no options left, and that's because the Department

1 of Water Resources isn't giving GWF any time or
2 any flexibility.

3 As far as the Owens-Illinois, Owens-
4 Brockway plant, I have no problems where it's at
5 right now, none whatsoever. That plant has put a
6 lot of people in Tracy to work that went to work
7 there their first job and retired from there as
8 their last job, and you know what, they were there
9 first. They were there first. And anybody that
10 would complain about Owens-Brockway or Owens-
11 Illinois, whatever you want to call them, I have a
12 problem with that. Because when you're there
13 first, then that's the way it should be.

14 And I think that's one thing that maybe
15 the CEC in the future needs to look at is not
16 whether something is there first, but something is
17 planned there first. You know, if somebody has
18 got some plans over here, you don't just go and
19 throw the old wrench in the spokes. That's what
20 it kind of looks like is happening to me.

21 Now, I want to read to you something
22 that was -- It's the last paragraph in the final
23 draft of the California Power Authority, 2002-2012
24 Electricity Outlook Report Executive Summary. You
25 may be familiar with that:

1 "Environmental and permitting issues
2 potentially constrain the Energy Commission's
3 ability to site new capacity additions efficiently
4 without resulting in contested proceedings or
5 potentially significant adverse impacts. These
6 issues include the availability of emission
7 offsets, water supply, water quality impacts, the
8 timing of federal permits, land use conflicts,
9 transmission congestion, and natural gas supply
10 constraints."

11 This is what I really want you to hear:
12 "Working with other agencies, the Energy
13 Commission directs its policy committees and staff
14 to provide guidance or assistance regarding these
15 constraints on licensing new capacities."

16 That says a lot. That tells me that,
17 you know what, I think you might have the power to
18 tell the Water Resources to allow these guys a
19 little bit more time to put this thing in the
20 right spot instead of having a you're-screwed and
21 you're-not-screwed conclusion to this whole thing.
22 It's scary to me.

23 Also, one thing that you need to talk
24 to your governor about and that's that whenever
25 you locate a plant in a community such as Tracy

1 that there will not be -- when you locate one of
2 these peaker plants, that there is not going to be
3 any programmed blackouts. These blackouts, they
4 were there a few years ago to spread the pain, so
5 to speak, I believe. And, you know, tell me I'm
6 full of it if I'm wrong. But I live in the
7 Modesto Irrigation District boundaries, and we
8 suffered through blackouts.

9 We've got more power over there, we
10 sell it to -- Anyway, we got a ton of power. We
11 were required to suffer blackouts. That's
12 something you guys could do is say, you know what,
13 let's get her going. Let's give something back to
14 the community.

15 Now, you can also tell the governor
16 that, you know what, we fumbled, fiddled, messed
17 around for probably a decade on 53 acres down
18 there and allowed that guy to continue to put
19 tires in that spot for ten years, and then guess
20 what. You know, you tried to get him to stop, the
21 thing explodes, and here we go. And then now you
22 can approve this thing in a matter of months.
23 It's amazing to me what you can and what you can't
24 do sometimes.

25 I think what -- I'm keeping my glasses

1 on here.

2 PRESIDING COMMISSIONER PERNELL: I'm
3 going to have to ask you to give your summation.

4 SPEAKER BOGETTI: Summation? Move it.
5 Give us more options. Thank you.

6 PRESIDING COMMISSIONER PERNELL: Thank
7 you.

8 (Applause.)

9 HEARING OFFICER TOMPKIN: Tiffany
10 Apodacci? I don't see any movement.

11 Mary Souza? No?

12 Larry Williams? Okay, and if you could
13 state your name and spell it for the reporter, I'm
14 sorry I neglected to ask that previously.

15 SPEAKER WILLIAMS: My name is Larry G.
16 Williams. Williams is W-i-l-l-i-a-m-s.

17 I live in the County at 33449 Los
18 Ranchos Drive. I'm approximately a mile and a
19 half from the proposed site, and I would argue
20 with Mr. Sarvey that I live closer to the site
21 than he does.

22 I've enjoyed these hearings, I
23 appreciate you people being here. I, like other
24 speakers, think the process is somewhat flawed,
25 that perhaps the public should be involved at an

1 earlier stage; however, I think you guys are doing
2 a great job and I really enjoyed being here.

3 A couple of comments and then I'll tell
4 you what my opinion is. I read about 500 pages of
5 data off your web site. I think there is too much
6 emphasis placed on the kit fox. I'd be very
7 surprised if you see a kit fox out there because
8 there are coyotes there, and the coyotes eat kit
9 foxes for lunch.

10 So it turns out that all the tree
11 sitings are based on the kit fox, and I think
12 that's wrong. I think the kit fox should have
13 some influence, but I think humans should too. So
14 I believe that it doesn't take a Ph.D. in botany
15 to figure out what kind of tree would go to shield
16 a site from human eyes.

17 Heard a lot of discussions about
18 compatibility, but we heard from the City,
19 Mr. Reeds this morning says that their revised
20 plan was for very low density, one house per ten
21 acres possibly, and also industrial sites. So if
22 there would be an industrial site and then a
23 residence of one house per ten acres, I don't see
24 a compatibility issue with that site at all.

25 As far as the plants that are there,

1 they're industrial, they were there first, it's in
2 the County. And I think we've all heard and
3 agreed that the County would have preference over,
4 or has power over that area because it is in the
5 County. It's not in the City. It may be in the
6 City's plan in the future, but it's not there yet.

7 So having said all that, I want to
8 comment that I believe the City and the County
9 governments did not take any action on this matter
10 until they were forced to by the people, the
11 citizens of this City and County, primarily from
12 the City, rose up in opposition to this plant
13 through some misinformation, some good
14 information. And I'm very encouraged that our
15 citizens did rise up to have their voices heard.

16 Having said all that, what is my
17 opinion? Build the plant. Thank you.

18 PRESIDING COMMISSIONER PERNELL: Thank
19 you.

20 (Applause.)

21 HEARING OFFICER TOMPKIN: Wayne
22 Livingston.

23 SPEAKER LIVINGSTON: Good afternoon,
24 Commissioners. My name is Wayne Livingston, last
25 name L-i-v-i-n-g-s-t-o-n, resident of Manteca,

1 California.

2 I've been involved -- I work for the
3 Electricians Union, but I have been involved with
4 the political issues of San Joaquin County now for
5 the past 22 years and also on some of the
6 developments in and around Tracy.

7 I'd like to kind of make a comment.
8 Things came up this morning about the Mountain
9 House project. When that was first envisioned,
10 part of the object of the thing was to have jobs
11 in the Mountain House community for -- you know,
12 the offset for the houses. And now a lot of the
13 comments today are all for the houses, and I just
14 want to make objection to that, that it was
15 actually to keep the people from going over the
16 Altamont. I have to go over there, my office is
17 in Dublin and I live in Manteca and I hate that
18 commute.

19 And we'd just like to see the community
20 stay with jobs here, you know, for the stuff. And
21 it certainly needs electricity. I know we've
22 talked about it. I've been to all except the one
23 meeting you went till past midnight, but I've been
24 to all the others and I've heard a lot of people
25 say that there's no power problem. There's

1 definitely a power problem. We've been blessed
2 maybe this winter with a wet winter, enough for
3 the snow to run the hydros up here in the hills.
4 But I can certainly remember the droughts around
5 here, they surely cut those hydros back to the
6 blackouts because they're not producing
7 electricity, and anything we can get we need.

8 So thank you very much.

9 PRESIDING COMMISSIONER PERNELL: Thank
10 you.

11 HEARING OFFICER TOMPKIN: Lynn Bedford.

12 SPEAKER SUPERVISOR BEDFORD: Thank you
13 very much. My name is Lynn Bedford. I'm
14 currently on the Board of Supervisors. I
15 represent the people in the Fifth District of San
16 Joaquin County.

17 You know, I've been sitting back there
18 thinking what can I say, what message can I give
19 you that's going to give you enough foresight to
20 make a recommendation to the Commission to deny
21 this plant? The same governor appointed me to the
22 Board of Supervisors that appointed you to the CEC
23 Commission. I made a promise to the governor to
24 keep an open mind on all issues and try to bring
25 people together through compromise, common sense,

1 and make this a better place to live.

2 But, you know, I can't see and I can't
3 find a compromise that's going to bring this
4 County and these residents together with GWF.
5 It's very, very difficult for me. I would like
6 everybody to love me. But, you know, I just can't
7 do that. I can't find a way, I can't find a
8 common denominator that says there's a good
9 tradeoff for the South County with GWF. I just
10 haven't found it.

11 But what I can tell you is in this
12 area, in this West Tracy area especially, in the
13 very close proximity of where they want to site
14 the plant, I've lived there for 57 years. I've
15 seen blue skies turn to grey. I've seen the air
16 quality so bad that the agricultural communities
17 had to make many, many sacrifices in the form of
18 reduced ag burning, things that we've done through
19 the years that have been commonplace. We've made
20 those sacrifices.

21 What really concerns me now is how much
22 more sacrifice do we have to make? Is the
23 sacrifice that we have to make now, is it going to
24 be in our lungs, in our children's lungs? When
25 you leave this meeting today and go on to the

1 Commission, I would sincerely hope that you would
2 make a recommendation to deny GWF and to take a
3 very, very close look at Florida Power and Light,
4 Calpine, the Altamont Project that are coming
5 right on their heels.

6 There's just nothing left here.
7 There's no reserve in our air quality here now.
8 We are impacted. The people in Red Bridge, the
9 surrounding adjacent landowners that live out
10 there in that area, they're here now today. What
11 your decision is going to make is going to impact
12 their lives financially, economically with all
13 those people out there. I would hope that you
14 would think --

15 GWF can relocate. They're not down in
16 concrete yet. Those other people that I'm
17 referring to that live in the adjacent area,
18 they're here now. Why create an impact on people
19 that are already here? I would hope there could
20 be a better siting, and I'm not against California
21 Energy plan as far as producing electricity. Who
22 is it for me to say we need it, we don't need it,
23 to me that's irrelevant to here.

24 The thing we're worried about today is
25 the siting. I would hope they could find a better

1 siting, and it's not my job to find a better
2 siting, it's their job. It's GWF. It's Calpine
3 and Florida Power and Light. Let them find those
4 sittings. And we all know what it depends on,
5 whether it's economically feasible.

6 I'm going to go fast through the
7 economic part, and I'm going to say let's be
8 concerned about our children and the people that
9 live here today, and if there's anything I can
10 ever do to help you folks, and this goes to the
11 community, feel free to call me anytime. I can
12 tell you right now I have received over 1300
13 letters and numerous phone calls in opposition of
14 GWF. I have not had one positive letter for the
15 siting of GWF.

16 To me, if I was sitting in your shoes,
17 this is an absolute no-brainer. There is not a
18 soul, not even one that says site GWF there, but I
19 have 1300 plus numerous phone calls in opposition.
20 I wish there was a close call, but it's not even a
21 close call, folks. With that, thank you very,
22 very much and thank you for moving your committee
23 down to serve the people of San Joaquin County.
24 Thank you.

25 (Applause.)

1 PRESIDING COMMISSIONER PERNELL: Thank
2 you very much.

3 HEARING OFFICER TOMPKIN: Mike Boyd.

4 SPEAKER BOYD: Hello. Some of you
5 probably met me before. My name is Mike Boyd, and
6 I'm the president of Californians for Renewable
7 Energy Care.

8 HEARING OFFICER TOMPKIN: Would you
9 spell your last name, please.

10 SPEAKER BOYD: B-o-y-d.

11 HEARING OFFICER TOMPKIN: Thank you.

12 SPEAKER BOYD: I reside at 5439 Soquel
13 Drive, Soquel, California. The reason I'm here is
14 because Bob and his family are members of CARE,
15 and they've asked me to assist him in these
16 proceedings. CARE, as many of you probably are
17 aware, was formed in 1999, and I've been involved
18 since then in numerous proceedings before this
19 Commission.

20 Now, one of the issues that came up was
21 Bob asked me to testify on his behalf as an expert
22 witness. We were denied an opportunity to do
23 that. So I feel that -- And the reason it was
24 denied was because it was stated that I wasn't an
25 expert. So I would like to state my

1 qualifications to act as an expert.

2 First off, my degree is in physics, not
3 law, from the University of California at Santa
4 Barbara. I just briefly wrote down some of the
5 siting cases that I've been involved in as
6 president of CARE. These include baseload plants,
7 Sutter, Las Medanos, and Delta energy centers in
8 Pittsburg, which I was instrumental in preparing a
9 civil rights complaint against the CEC with the US
10 EPA over their permitting of those two projects.

11 There's also the Contra Costa power
12 plant in Antioch, in which we were an intervenor;
13 the Metcalf energy center, in which we were an
14 intervenor. And we are currently in litigation
15 against the California Energy Commission over
16 their approval of that project.

17 Another case was the Blythe energy
18 center in Riverside County. Two of our members
19 have received technical assistance in preparing
20 and filing litigation against that project which
21 is currently on appeal.

22 We're currently intervenors in the
23 Potrero Hill project. We've also been -- Besides
24 now the Tracy peaker, we were involved in the
25 United Golden Gate peaker, the Pegasus power

1 plant, where they proposed to put a power plant on
2 a prison site.

3 We also are parties to the federal
4 proceedings, the equivalent of the CEC at the
5 federal level. It's called the Federal Energy
6 Regulatory Commission. That agency is currently
7 dealing with things, related issues, relevant
8 issues to this proceeding that have to do with
9 long-term energy contracts negotiated by the
10 state, which the state is trying to now
11 renegotiate. CARE has a motion before, under
12 consideration before the FERC to cancel those
13 contracts, including this one for this project.

14 CARE also has an outstanding
15 administrative complaint with the Department of
16 Energy, Office of Civil Rights against the siting,
17 construction and operation of power plants in
18 California by the California Energy Commission
19 where we alleged discrimination in the location of
20 those plants, many of them in communities of
21 color.

22 So that introduces you to my background
23 in the siting process. I don't know any of the
24 experts that were called up to testify before you
25 that have more experience than I do, so your

1 determination that I am not an expert is
2 erroneous. And further, I did provide in advance
3 of the hearings a copy of my resume, and I
4 requested at that time when I provided that of the
5 hearing officer if I should provide a declaration,
6 without any response back.

7 So now that I've laid that out for you
8 and you know who I am and what I'm about, let's
9 talk a little bit about what many people call so-
10 called CEQA exemption that many believe the CEC
11 has. This is a myth. The CEC is not exempt from
12 CEC. They have what is called CEQA equivalency.
13 The only exemption that you have is from the
14 requirement to prepare an EIR. All the public
15 participation rights in CEQA are still there, and
16 many of the people here that have participated in
17 the planning process in your city and county are
18 probably aware of what the requirements are for
19 public participation.

20 You've been to meetings where you
21 commented on draft EIRs, you've been to meetings
22 and you've seen the response to your draft EIRs
23 and the final EIR. That's what's missing in this
24 process. And CARE has been advocating for years
25 to have a simple process like the City and County

1 has for the siting process.

2 Now, the myth is that they're exempt,
3 because they're not exempt. They have an
4 equivalent document. Most people think because of
5 that, that what they're doing here really has no
6 effect, and a lot of people have been concerned,
7 besides Bob, about the fact that we haven't been
8 able to put our stuff into evidence, in the
9 record. Under CEQA, CEQA specifically defines
10 what the administrative record is, and my
11 understanding is that the CEC is still subject to
12 the CEQA requirements for the administrative
13 record.

14 What that means to you and me is it
15 doesn't matter whether I get up here and testify.

16 PRESIDING COMMISSIONER PERNELL: Are
17 you --

18 SPEAKER BOYD: Are you going to cut me
19 off?

20 PRESIDING COMMISSIONER PERNELL: Yes.

21 SPEAKER BOYD: Okay.

22 PRESIDING COMMISSIONER PERNELL: Yes.

23 What I want you to do is be specific to this
24 project. I don't think anyone in here needs a
25 CEQA lesson.

1 SPEAKER BOYD: Well, I disagree,
2 strongly.

3 PRESIDING COMMISSIONER PERNELL: Well,
4 then you can give it to them off the record.

5 What I'm interested in as community
6 comment is how it relates to this project.

7 SPEAKER BOYD: Okay. I'll try and be
8 more specific to this project.

9 PRESIDING COMMISSIONER PERNELL: Thank
10 you.

11 SPEAKER BOYD: How it relates to this
12 project is that the public's comments, my
13 comments, everybody else's comments, the important
14 point is going to come after the presiding
15 member's proposed decision is issued. Because
16 that's the equivalent to what would be a quasi-
17 draft EIR. The final decision is the final EIR,
18 and that's when the 30-day clock for the CEQA
19 actually occurs.

20 Now, what people need to know, though,
21 is that it's important for them to put their
22 written comments into the Energy Commission before
23 the final decision comes out, because then it's
24 part of the administrative record. All this stuff
25 that we've been going through here is useful for

1 your decision, but as far as us litigating any of
2 this, it's got to be in the administrative record.

3 And the proof of that is the two suits
4 that I cited before that have already been filed,
5 based on the administrative record, not the
6 hearing evidentiary record. So that's the first
7 issue.

8 Now, the next thing I wanted to talk
9 about, which relates directly to this project, is
10 an issue in CEQA they call precommitment. Bob
11 filed a motion, he calls it predetermined
12 approval. And what we're talking about is things
13 that have occurred that make it appear that you've
14 already made up your mind. It's a done deal.

15 One example of this is the fact that
16 there has never been a power plant before the
17 Energy Commission that's ever been turned down.
18 They've all -- The only power plants that have not
19 been -- that have not gone forward are those that
20 have been withdrawn by the applicant. Maybe staff
21 encouraged them to do that, but I've never heard
22 of any denial of any power plant application in
23 the history of the Energy Commission. So that in
24 itself implies predetermined approval.

25 Then there's the executive orders that

1 were issued by the governor to expedite the
2 process which cut out public participation and cut
3 out requirements of adequate CEQA analysis. And
4 then there's the issue of the Department of Water
5 Resources contract that's already been signed and
6 negotiated for this project. Under that, they
7 signed a contract for services for a plant that
8 hasn't even been constructed yet. If that isn't
9 precommitment, I don't know what is.

10 And then the final evidence of
11 precommitment was the delivery of the turbines to
12 the project site. If that's not evidence of
13 precommitment, I don't know what is either.

14 Now, I'm done with the CEQA stuff. Now
15 let's talk a little bit about some of the
16 mitigation issues.

17 PRESIDING COMMISSIONER PERNELL:

18 Mr. Boyd --

19 SPEAKER BOYD: I've got three issues,
20 and then I'm done.

21 PRESIDING COMMISSIONER PERNELL: All
22 right. You've got two minutes.

23 SPEAKER BOYD: Okay. First, on the
24 mitigation of their impacts, we've been talking
25 about SCR catalysts and CO catalysts and we

1 brought up the issue of SCONOX and why we thought
2 SCONOX was better, but the fact is if you can
3 achieve the same levels of emission controls with
4 SCR and CO catalysts that you can achieve with
5 SCONOX, just by increasing the amount of catalyst
6 you use.

7 Now, some of you raised the -- one of
8 the Air District folks raised the issue of, well,
9 if we double or triple the amount of ammonia
10 catalyst that we're using in our system, that's
11 going to increase the amount of ammonia slip.
12 Well, that's not true. As the reaction is more
13 efficient, there's less slip.

14 So the reality of the situation is that
15 the applicant could achieve the same level of
16 emission controls for NOX, for example, as a
17 combined-cycle plant would achieve using more of
18 the catalyst. It's real simple. It costs more,
19 but it's more efficient.

20 And then the second issue is the issue
21 of mitigation. The gentleman got up here and
22 said, well, I don't really think we should make a
23 big deal out of these kit foxes. Well,
24 Dr. Smallwood identified for you in the impact of,
25 broader impact from the emissions of this project

1 on the red-legged frog habitat. And I pose that
2 the applicant should provide additional mitigation
3 funds for the loss of frog habitat.

4 And then finally, in conclusion, the
5 inverse condemnation issue, I think it's important
6 that all the adjacent property owners to this
7 project know that by the County failing to
8 perform, and the City failing to perform their
9 duty and do their own independent analysis, that
10 your property is losing value. And you should do
11 something about that. It's not just the City's
12 exposure, it's the County's and the City's
13 exposure too.

14 And, in conclusion, you guys have got a
15 tough decision to make. Never in the past, like I
16 said before, have I heard of any power plant
17 that's ever been turned down by this Commission.
18 So the choice before us today is whether or not
19 you're going to decide this or the court is going
20 to decide this. You decide that for us, and then
21 we'll go from there. Thank you.

22 PRESIDING COMMISSIONER PERNELL: Thank
23 you.

24 HEARING OFFICER TOMPKIN: Our next
25 speaker will be Patty Gilliland.

1 SPEAKER GILLILAND: I am not a public
2 speaker. I can't tell you what it took for me to
3 get up here.

4 HEARING OFFICER TOMPKIN: Please state
5 your name for the record and spell it.

6 SPEAKER GILLILAND: Oh, sorry, Patty
7 Gilliland.

8 HEARING OFFICER TOMPKIN: And could you
9 spell your last name, please.

10 SPEAKER GILLILAND: Yes. G-i-l-l-i-l-
11 a-n-d.

12 HEARING OFFICER TOMPKIN: Thank you.

13 SPEAKER GILLILAND: Okay. My heart is
14 going a little fast here, so bear with me.

15 I'm a homeowner here in Tracy, and I'm
16 addressing you today because -- to express my
17 sadness, concern and anger about the proposed
18 construction of this power plant. We moved here
19 in Tracy in the spring of 1991. Tracy appealed to
20 us because it was a small town, away from any of
21 the problems in the Bay Area. We recently
22 purchased our dream home in Red Bridge community,
23 just one and a half miles from the proposed GWF
24 power plant.

25 We invested our life savings in our

1 home and we felt that it would be a very good
2 investment, one which would be a part of our
3 retirement nest egg. This dream is being stolen
4 from us because of profit and greed. I know a lot
5 of money has been invested in the project by the
6 interests that have no interest in the well-being
7 of Tracy and its residents.

8 It has been disclosed that GWF, the
9 proposed site is ideal to the proximity of the
10 PG&E high-pressure natural gas lines, the Mendota
11 canal for the water use and the cooling process,
12 and the nearby power lines for distribution. What
13 is ideal for GWF is terrible for the citizens of
14 Tracy.

15 How much profit is enough? The greed
16 of a corporation should not outweigh the health
17 and safety of our community. There are those that
18 will testify that the plant is safe and clean.
19 They are sponsored by those who have a financial
20 gain in this plant if this plant is approved.

21 The fact is, the plant will pollute.
22 They need the purchase credits for the other parts
23 of the valleys to offset the increased pollution
24 that it will cause here in Tracy. GWF has done a
25 good job of getting much of the application

1 process completed before word got out to the
2 people of Tracy and became aware of their plans.

3 I am not opposed to power and I am not
4 opposed to industry and I am not opposed to
5 profit. What I am opposed to is placing a power
6 plant right next to a neighborhood, upwind from
7 where my children will go to school and play.

8 Again, my son has asthma. Normally he
9 breathes just fine, but I'll never forget the time
10 when I rushed him to the emergency room because he
11 could not breathe. His lips turned blue, his eyes
12 rolled back, and I thought he would not move his
13 air in and out of his lungs. He was admitted to
14 the hospital and he recovered. Two of these
15 asthma attacks required hospitalization.

16 My son is not the only child who has
17 asthma or that will be impacted by this power
18 plant. Billions of dollars are spent trying to
19 clean up the environment. Some contamination has
20 been left behind by military, some by private
21 industry. Regardless of who caused damage to the
22 environment, it is the people who pay for the
23 cleanup. Here is an opportunity to prevent
24 another source of pollution before it becomes
25 something else to clean up.

1 The communities of Atherton, Palo Alto,
2 Hillsborough, Alamo, Danville, Black Hawk would
3 never tolerate the construction and operation of a
4 project such as this. Why must we allow the
5 decline of our community and our dream, simply
6 because we don't have the deep pockets to fight
7 that GWF has?

8 We already have the biomass plant and
9 the glass plant very nearby. This does not mean
10 we must also have another industrial plant right
11 where we live. We never would have invested our
12 life savings in our home in this community if we
13 had known about this proposed power plant, and
14 don't tell me that this project will not affect
15 the value of my home. Just the thought of a
16 peaker power plant has affected the values.

17 GWF does not care that our home values
18 will decline or that the small-town charm will
19 disappear and resemble areas such as Pittsburg and
20 Richmond. GWF is proposing a one-time \$500,000
21 gift to grease their way into Tracy. We as
22 citizens of Tracy should be insulted. Does 500K
23 even come close to compensating the community for
24 the negative impact and the air pollution,
25 decrease in our property values and decline in the

1 quality of life?

2 I say put this plant where it will not
3 affect our lives and our health. The profit of
4 greed of few should not outweigh the health and
5 safety and financial security of many. Thank you.

6 PRESIDING COMMISSIONER PERNELL: Thank
7 you. You did just fine.

8 (Applause.)

9 HEARING OFFICER TOMPKIN: Next we'll
10 hear from Gail Mercer.

11 SPEAKER MERCER: Good afternoon.

12 PRESIDING COMMISSIONER PERNELL: Good
13 afternoon.

14 SPEAKER MERCER: My name is Gail
15 Mercer. That's M-e-r-c-e-r. I'm with the
16 Northern California Electrical Construction
17 Industry. We represent over 150 contractors and
18 over 5,000 electricians in the Greater Bay Area.
19 Reliable energy is of paramount
20 importance. If the infrastructure does not grow
21 along with the demand, shortages occur, as we saw
22 in the winter of 2000 and 2001. Peaker plants are
23 designed to go on line only on an as-needed basis.
24 They're not on line 100 percent of the time,
25 although it seems to be presumed that way.

1 If the demand is there but there's not
2 enough backup in the power and the distribution
3 system, then outages occur. When outages occur,
4 as we all know, backup generators come on line.
5 If you want to talk about pollution, have diesels
6 come on.

7 According to your own 2002-2012
8 Electricity Outlook Report, tight capacity
9 supplies are one of the principal conditions that
10 allowed the California market to destabilize. New
11 supplies will reduce price volatility and
12 reliability of service. Power plant construction
13 in California has not kept pace with the growing
14 demand. Many of the existing power plants are 40
15 to 50 years old. They often break down more
16 frequently than newer facilities and they need
17 more maintenance. This impacts the power quality.

18 Several factors contribute to
19 uncertainty in trying to assess the risk of
20 shortages. One is the weather. We never know
21 what the weather is going to be. You get a hot
22 summer, your peak demand goes way up, you couple
23 that with a dry winter and you've got problems.
24 There's no way to know that. We can hope, but we
25 can't know.

1 Two, the aging generation and
2 transmission facilities and the rate that they're
3 forced out of service. And three, potential
4 construction delays on the availability of new
5 power plants. Due to the current financial
6 instability in the market due to the collapse of
7 Enron, many potential plants are being delayed or
8 canceled. Calpine just recently was devalued, and
9 they have deferred or canceled over \$3 billion in
10 turbine orders nationwide.

11 There are 16 projects, according to
12 your web site, currently being looked at that are
13 over 300-megawatt capacity. They're listed in the
14 approval process. Two are on hold, one has been
15 suspended. Six additional projects, their on line
16 date has been delayed and a new date will not be
17 determined until the market improves and they can
18 get financing. Well, of the 16 that leaves five.
19 Of the six that have been delayed, four are
20 Calpine projects and one is Enron, so I don't
21 think there's a lot of future there.

22 There are ten projects in the under-
23 300-megawatt range. Of these ten, five are on
24 hold. San Joaquin County has three potential
25 power projects. One is the Tracy peaker project,

1 which we're talking about today, and two others
2 are Calpine projects, and they're on hold. On
3 Saturday, March 23rd, 2002, the Contra Costa Times
4 had an article stating that there was a potential
5 for a new power shortage in 2004 due to the
6 possibility that plants scheduled to be completed
7 by that date might not be finished in time.

8 In siting new plants, the accessibility
9 of water, natural gas supply and transmission
10 lines are crucial. Siting must also take into
11 account transmission system congestion. The Tracy
12 peaker project is in proximity to all three
13 required resources and it is located in an area of
14 increasing demand. The LORS requirements have
15 been met, the air quality standards have been met,
16 and they have the additional task force trying to
17 mitigate existing pollution, to retrofit some of
18 the existing sources in Tracy to reduce the air
19 quality impact.

20 Conservation alone can't allow us to
21 meet our expanding needs. There is uncertainty as
22 to whether conservation was due to people just
23 cutting back, or was it a combination of that plus
24 installing new, energy-efficient equipment?
25 That's long term, the new equipment. As we know,

1 people who become comfortable, then they start --
2 the conservation efforts decrease.

3 Building additional housing and
4 commercial enterprises without adding to the
5 infrastructure is extremely short-sighted and can
6 result in disruptions to our power system as we
7 saw in 2000-2001. We feel that this will benefit
8 the community in the long run by providing jobs
9 and contributing to the stability of the
10 electrical power system. We urge you to approve
11 this project. Thank you.

12 PRESIDING COMMISSIONER PERNELL: Thank
13 you.

14 HEARING OFFICER TOMPKIN: Our next
15 speaker will be Caitlin Sarvey.

16 SPEAKER CAITLIN SARVEY: Hi, my name is
17 Caitlin Sarvey. My last name is spelled
18 S-a-r-v-e-y, and I'd like to tell you why I don't
19 think the power plant should go in.

20 We have bad air pollution days without
21 the power plant in Tracy. Like in the summer, I
22 have a lot of fun things to do, but sometimes the
23 air is too bad and my mom makes me go inside.
24 That doesn't make me happy, so I'm guessing that
25 with another power plant, those days could be

1 increased in their numbers.

2 I'd like to tell you a resolution of
3 opposition from the Tracy Unified School District.
4 They don't want the power plant to go in either.
5 Just about every day, I need to take an asthma
6 medicine to control my asthma. I don't like this,
7 and having another power plant could increase the
8 risk of children having asthma attacks more. That
9 would mean that there would be more children in
10 the hospital, and not just children would be
11 affected. The adults would be affected, the
12 children, the babies, the schools, everyone in
13 Tracy could be affected by the plant.

14 My little brother also has asthma.
15 Like sometimes, if we even light a little fire in
16 the fireplace, just that little bit of smoke could
17 make him sick, and it could make me sick too. So
18 think of all the pollution that could come out of
19 just one more plant and make just how many
20 children sick.

21 So we also need to think about the
22 health risks and about the opinions, and people
23 like my father and Irene Sundberg, who intervened,
24 they sacrificed a lot of time away from their
25 families and doing things that they like to do

1 better than reading binders or looking on the
2 Internet for information. And I'd like to thank
3 all of you for coming and I'd just like you to
4 think about everything that my parents have said.
5 Thank you.

6 PRESIDING COMMISSIONER PERNELL: Thank
7 you.

8 (Applause.)

9 PRESIDING COMMISSIONER PERNELL: Can I
10 ask, how old are you?

11 SPEAKER CAITLIN SARVEY: I recently
12 turned 12.

13 PRESIDING COMMISSIONER PERNELL: Thank
14 you, and I think it takes a lot of courage to come
15 up and do your presentation, so the committee is
16 really thankful that you did that.

17 HEARING OFFICER TOMPKIN: Our next
18 speaker will be Mike Badner.

19 SPEAKER BADNER: Hi, my name is Mike
20 Badner. That's spelled B-a-d-n-e-r. I live at
21 2704 Red Bridge Road.

22 PRESIDING COMMISSIONER PERNELL: Mike,
23 before you start, I just want Caitlin to know that
24 we're going to docket her presentation for the
25 record. So thanks again.

1 SPEAKER BADNER: Anyway, I'm going to
2 try to keep this under three minutes. I want to
3 give a brief background about myself. I have a
4 degree in city and regional planning. I have 20
5 years' experience in a planning capacity, focused
6 on land use planning, land planning and
7 entitlements.

8 I moved to Red Bridge in September of
9 last year with my wife and two kids, aged two and
10 four. And had I known the plant was going to be
11 proposed here, I don't think we would have bought
12 there. On my drive home almost every evening -- I
13 come from the east to the west, a reverse commute
14 in Tracy, pretty tough -- and from miles away I
15 see the smoke stacks that already exist there.
16 And the smoke goes right to Red Bridge and then
17 across the City of Tracy. I just don't see how
18 adding one more smoke stack there is going to help
19 anything.

20 I also feel that decreasing the value,
21 there will definitely be a decrease in the value.
22 I don't care what people say. If I were buying
23 there, I would definitely think that -- you know,
24 that would definitely decrease someone's value of
25 home.

1 I'm very disturbed that the project has
2 actually come this far. And I want to make it
3 clear that my family and I are against the
4 proposed project, the proposed peaker project. It
5 doesn't sound like much of a peaker plant to me.

6 Also, I'm not against it, like Patty
7 said and many other people, there are better
8 places for this plant. South of town, downwind is
9 a much better place than upwind of the residence.
10 Anyway, thank you.

11 PRESIDING COMMISSIONER PERNELL: Thank
12 you.

13 (Applause.)

14 HEARING OFFICER TOMPKIN: Next we'll
15 hear from Mike Durkee.

16 SPEAKER DURKEE: It's Mike Durkee,
17 D-u-r-k-double e, and I promise to be very brief.
18 I'm here on behalf of the Red Bridge property
19 owners as well.

20 I want to thank everybody for the
21 process we have had. It's been arduous, but I
22 think everybody has done a good job in providing
23 the forum that we were hoping for. And I'm really
24 not here to pick a fight, but I would like to make
25 a comment about something that Mr. Grattan said in

1 his final comments.

2 This is not an applause meter to us.
3 This is not that kind of issue to us. This is
4 about science and it is about law to us. From our
5 perspective it's bad science and a bad application
6 of the law. The science is flawed because we
7 believe that the receptors should have been put
8 into reasonably foreseeable locations of
9 reasonably foreseeable future development, which
10 is South Schulte. We think that's a fatal flaw in
11 the science.

12 We think the law has been improperly
13 applied, because under the County LORS, you do
14 have to make the five findings. And, as you've
15 heard from the best testimony, those five findings
16 were not made. And we appreciate the opportunity
17 that the community has given for people to weigh
18 in on that issue through written briefs.

19 So again, we're not here to pick a
20 fight, we're not against the CEC, we're certainly
21 not against GWF, we're certainly not against power
22 plants. But we are about finding out and
23 discovering the truth, as everybody in front of
24 you has come to you and said that. And when we
25 look at the truth and find it, we have to say we

1 disagree with the king's new clothes.

2 Taken to its logic, natural and naked
3 truth, we think it's very clear that it should not
4 be here. Thank you very much.

5 PRESIDING COMMISSIONER PERNELL: Thank
6 you.

7 (Applause.)

8 PRESIDING COMMISSIONER PERNELL: Okay.
9 I have a few brief comments, and I'll try and keep
10 it under three minutes.

11 First of all, I want to thank the City
12 of Tracy and especially its residents for coming
13 out, for banding together and having your voices
14 heard. I want to especially thank Ms. Sundberg
15 and Mr. Sarvey for entering a process that is
16 difficult, even from a legal perspective for those
17 who have been trained to -- like attorneys, who
18 have been trained to participate in these types of
19 proceedings.

20 So I really, really appreciate you
21 doing that, and your courage, as I have said, is
22 fantastic, in terms of stepping up to the mic and
23 addressing this committee. And it's not easy to
24 do, and I know because I came from a community as
25 a community activist. So that's not easy to do,

1 and I appreciate that.

2 I also want to thank the applicant and
3 staff and all of the intervenors for having the
4 type of proceeding that is a professional
5 proceeding, and that's what we look for. We're
6 concerned about all of the evidence, and we want
7 to get everybody's comments, but we want to do it
8 in a professional manner. And I think that's been
9 done here at Tracy.

10 Just a little bit about how the process
11 will work from here. Again, and I've stated this
12 early on, that the recommendation of the committee
13 will then go to the full Commission, and there are
14 five Commissioners. They'll have an opportunity
15 to review the record, review my recommendation and
16 then the five Commissioners will vote yea or nay
17 in terms of the project.

18 And let me just be clear: This is not
19 a done deal, and I think Mr. Grattan, who has been
20 through some of these proceedings, knows that.
21 Not by any means is it a done deal.

22 The other thing is the City of Tracy
23 has been very hospitable, and we started out, we
24 the committee started out on a rocky road. We
25 couldn't get the mics right, and just some things

1 were happening. And I hope that as this committee
2 and this process continued, we got some of the
3 things right. And I want to thank, I also want to
4 thank the applicant for working with us and for
5 ensuring that everybody can hear and helping us
6 find a meeting facility.

7 Mr. Wheeler was great, and some of
8 these proceedings we don't have that type of
9 cooperation from applicants. And some of these
10 procedures we don't have the type of concerns from
11 the community. But Tracy is, I have a renewed
12 respect for Tracy, and that is -- and I say that
13 because I pass Tracy going to San Francisco, I
14 mean, I go through Stockton, it's easier for me to
15 do that. And so, you know, you see the sign,
16 Tracy, and you never -- you just pass it.

17 Having been here, I really have a
18 respect for the community, for what the City of
19 Tracy is trying to do in terms of its development,
20 what the County of San Joaquin is doing in terms
21 of ensuring, especially Supervisor Bedford who has
22 been here. And it's interesting, because most of
23 the elected officials want to get up and say
24 something and leave, and I didn't know for a
25 couple of meetings that he was even an elected

1 official. So he has sat there and participated in
2 these proceedings.

3 So I want to, just in closing, and I
4 think I'm coming up against my three minutes, I
5 really want to just thank the City of Tracy and
6 its residents. And we will, again, and I've said
7 this over and over, we will consider the evidence,
8 we will take into account all of the public
9 testimony, and a decision will be made. And I
10 think one gentleman said, you know, this is kind
11 of a Catch-22, because somebody is not going to be
12 happy, and I think he's right about that. But you
13 have to know that the process will have to
14 continue, and there has to be integrity in the
15 process.

16 And we've been doing this for a while,
17 and the Commissioners are kind of stretched
18 because we have these projects. And because some
19 of them have now fallen off, you know, perhaps
20 we'll get more time and get our bodies healed.
21 But with that, I want to turn it back over to our
22 hearing officer --

23 PUBLIC ADVISER MENDONCA: I am really
24 embarrassed --

25 PRESIDING COMMISSIONER PERNELL: You

1 are never embarrassed. What's wrong?

2 PUBLIC ADVISER MENDONCA: I had a
3 comment that was mailed to my office that I did
4 not give.

5 PRESIDING COMMISSIONER PERNELL: All
6 right. We will hear from our Public Adviser, and
7 then I want to turn this back over to our hearing
8 officer, and she'll kind of lay out the briefs
9 that we talked about and some more time frames.

10 So, Ms. Mendonca, if you will come
11 forward.

12 PUBLIC ADVISER MENDONCA: The comment
13 comes from Scott Stewart, who lives at 1394 Maiden
14 Court.

15 "First of all, I would like to thank
16 the Commissioners as well as the staff for having
17 an open mind about our concerns on the proposed
18 power plant. As you can see and hear, this is an
19 important topic to myself and my family about the
20 quality of life that we are accustomed to having
21 over the last 25 years as Tracy residents.

22 "The final decisions that your
23 committee is about to make are ones that we all
24 have to live with for decades to come. If you
25 would put yourself in my position and you lived

1 here as I do, I'm confident that you would decide
2 that this is not the best place to build this
3 plant due to the negative air quality that we
4 already have in this county.

5 "Adding another source of pollution to
6 this area would only compound the problem, and
7 would be unfair and unjust to the taxpaying
8 citizens that call this City and County their
9 home. There is not one professional witness that
10 has spoken to these hearings that can predict the
11 future and what cumulative effects this plant will
12 have on the quality of life for those who live in
13 the City or surrounding areas, because nobody
14 knows what the future holds.

15 "So please make the right decision for
16 all of us who live here. Thank you, property
17 owner in Red Bridge, Scott Stewart."

18 And I apologize.

19 PRESIDING COMMISSIONER PERNELL: Thank
20 you.

21 Ms. Tompkins.

22 HEARING OFFICER TOMPKIN: Okay. I too
23 want to thank everyone for their courtesy and
24 professionalism in this proceeding. I believe
25 I've already laid out the briefing schedule. If

1 there are any questions, I'll entertain them at
2 this point.

3 SPEAKER SARVEY: Will you come back and
4 explain your decision to us either way, or how
5 will you let us know?

6 HEARING OFFICER TOMPKIN: Well, what
7 will happen is that there will be a presiding
8 member's proposed decision that will be available
9 to the public, then when that decision issues
10 there will be a 30-day comment period. It's not
11 really part of the normal process for me to come
12 back and explain that decision, but what you can
13 do is review the decision. There will be a
14 business meeting approximately sometime after that
15 30-day period where you can come in and again
16 offer public comment to the Commissioners. That
17 will be in Sacramento.

18 But in terms of just explaining, no,
19 you can contact the project manager, the Public
20 Adviser, and maybe they can provide assistance,
21 but I'm -- that's not a function that I'm able to
22 perform.

23 SPEAKER SARVEY: Could you maybe come
24 here for the business meeting?

25 PRESIDING COMMISSIONER PERNELL: We

1 normally -- Because there are the five
2 Commissioners --

3 SPEAKER SARVEY: Oh, all five
4 Commissioners?

5 PRESIDING COMMISSIONER PERNELL: Right,
6 and so that's not normally done, to come out to
7 the community and hold a Commission meeting,
8 because there are other proceedings and other
9 things on the agenda that we have to cover that
10 allows us to be in Sacramento.

11 SPEAKER SARVEY: So we can come to you,
12 though?

13 PRESIDING COMMISSIONER PERNELL: You
14 can absolutely come to the Commission meetings.

15 SPEAKER SARVEY: Will you please let
16 our Tracy Press know when that will be, so that
17 all of us will know when to come?

18 PRESIDING COMMISSIONER PERNELL: Right.
19 There will be a schedule that will go out through
20 all of the, and correct me if I'm wrong, through
21 all of the intervenors and we can get that through
22 the Public Adviser's office to make sure that
23 everybody knows when the Commission meeting is.

24 SPEAKER SARVEY: Thank you.

25 PRESIDING COMMISSIONER PERNELL:

1 Mr. Sarvey?

2 INTERVENOR SARVEY: Yeah, I had a
3 couple of questions. You said the brief was
4 limited to 15 pages or ten pages, was it?

5 HEARING OFFICER TOMPKIN: Fifteen
6 pages.

7 INTERVENOR SARVEY: Fifteen, because
8 I'm kind of long-winded and I've got a lot of
9 topics. So will there be any latitude with that,
10 by any chance?

11 HEARING OFFICER TOMPKIN: There are so
12 many parties involved, as well as a multitude of
13 issues, we really have to be strict. So at 15
14 pages, I get to stop reading.

15 INTERVENOR SARVEY: Okay, and could you
16 tell me one more time, the part that I asked to
17 put in writing about you wanted definitions about
18 the County LORS and why the CEC should --

19 HEARING OFFICER TOMPKIN: What I'll do
20 is I'll just again read you the issues and I'll
21 try to do it slowly so that maybe you can jot it
22 down.

23 INTERVENOR SARVEY: Thank you.

24 HEARING OFFICER TOMPKIN: The first
25 thing was that we were, the committee was

1 interested in a legal discussion of the relevance
2 of the City of Tracy's LORS, how are those
3 relevant.

4 Then the other issue we have formulated
5 more as an issue and it is as follows: In order
6 to find LORS compliance and that the Tracy peaker
7 project was a permitted use, did the California
8 Energy Commission, the CEC, as the lead agency,
9 have to make all of the findings and subfindings
10 the County of San Joaquin would have made, had it
11 been the lead agency on the project. I hope that
12 would help.

13 INTERVENOR SARVEY: Thank you.

14 HEARING OFFICER TOMPKIN: If there's
15 nothing further --

16 PRESIDING COMMISSIONER PERNELL: Okay.
17 If there's nothing further to come before this
18 committee, this committee is adjourned. Thank you
19 all for coming.

20 (Thereupon, the hearing was
21 adjourned at 2:30 p.m.)

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24 *****

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission public hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April, 2002.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345_